Case No. 130509

In the
Supreme Court of Illinois

Candice Martin, Individually, and as Executrix of the Estate of Rodney Martin, deceased,

Plaintiff-Appellee,

v.

Goodrich Corporation f/k/a B.F. Goodrich Company, and PolyOne Corporation, Individually and as Successor-By-Consolidation to the Geon Company n/k/a Avient Corporation,

Defendants-Appellants.

Questions of Law Certified by the United States
Court of Appeals for the Seventh Circuit, Case No. 23-2343,
There on appeal from the United States District Court
for the Central District of Illinois, Case No. 1:21-cv-01323,
Honorable James E. Shadid, Judge Presiding

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NATURE OF THE CASE

Rodney Martin worked at one of B.F. Goodrich Company's manufacturing plants for almost 50 years. Goodrich knowingly exposed Rodney to hazardous levels of carcinogenic chemicals during the first decade of his employment. That exposure eventually cost Rodney his life. More than 40 years after his last exposure to these deadly chemicals, Rodney was diagnosed with liver cancer on December 11, 2019, and died the following year.

Before May 2019, Rodney and plaintiff-appellee Candice Martin, Rodney's widow and the executrix of his estate, would have been left without a remedy under the law. Due to the long latency period of Rodney's liver cancer, their ability to recover statutory benefits under the Workers' Occupational Diseases Act, 820 ILCS 310/1 *et seq*. ("ODA"), was long-since barred by one of the statute's several repose provisions that precludes compensation for disablement occurring more than two years after the date of last exposure. Any common law claim would have also been defeated by the ODA's exclusive remedy provisions. That type of result, which this Court characterized as "harsh," was what the Court interpreted the ODA to mean in *Folta v. Ferro Engineering*, 2015 IL 118070, a long-latency disease case similar to this one. Whether a "different balance" should be struck, this Court said, was "a question more appropriately addressed to the legislature." The legislature answered.

At the Court's invitation, the General Assembly amended the ODA on

May 17, 2019, waiving the statute's exclusivity provisions for claims brought after the amendment's effective date where an ODA benefits claim was otherwise time barred by any period of repose or repose provision set forth therein. Injured employees and those bringing suit on their behalf may now seek redress outside of the ODA's administrative framework when they otherwise could not, through no fault of their own, seek compensation due solely to the passage of time. The General Assembly explained that it intended to give individuals like Rodney and Candice an opportunity to seek justice in the courts when the ODA offered them no remedy.

Several years after the ODA was amended, Candice filed a federal lawsuit in 2021 against Goodrich and the successor to one of its production divisions, Avient Corporation. Defendants moved to dismiss arguing Candice's claims were redressable, if at all, exclusively under the ODA and that her claims were barred by the statute of repose. Defendants also claimed the recent amendments to the ODA were either inapplicable here or, if they did apply, unconstitutionally deprived them of defenses in which they gained a vested interest decades ago.

The district court rejected defendants' arguments and denied their dismissal motions, but found the issues presented were appropriate for interlocutory review. The United States Court of Appeals for the Seventh Circuit concluded it could not confidently answer these questions of Illinois law and accordingly certified them for this Court's consideration. *Martin v.*

Goodrich Corp., 95 F.4th 475, 482-84 (7th Cir. 2024).

STATEMENT OF FACTS

A. Factual background

The decision giving rise to this Court's review arose from the federal district court's denial of a motion to dismiss brought under Federal Rule of Civil Procedure 12(b)(6). The relevant facts are therefore limited and gleaned from the pleadings.

Rodney Martin worked for B.F. Goodrich Company at its Henry, Illinois, manufacturing plant from 1966 until he retired in 2012.[1] Dkt. 26, Am. Compl. ¶ 3.[2] Rodney was exposed to vinyl chloride monomer and vinyl chloride containing products from the beginning of his employment until sometime in 1974 when defendants allegedly abated vinyl chloride exposures. *Id.* ¶ 17. Vinyl chloride monomer is a colorless gas derived from petroleum that is essential to the production of polyvinyl chloride, otherwise known as PVC. *Id.* ¶ 18; *Martin*, 95 F.4th at 480.

On December 11, 2019, several months after the May 2019 amendments became effective, Rodney was diagnosed with hepatic angiosarcoma (liver cancer), and he sadly passed away on July 9, 2020. Dkt. 26, Am. Compl. ¶ 20.

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[1] In 1993, Goodrich spun off its vinyl chloride business to the Geon Company. The Geon Company later became PolyOne Corporation following a merger with M.A. Hanna Co. Dkt. 26, Am. Compl. ¶ 6. PolyOne Corporation is now known as Avient Corporation.

[2] "Dkt. __" citations refer to the PACER docket number entries in the federal district court.

Rodney's liver cancer was caused by his hazardous exposure to vinyl chloride monomer and vinyl chloride containing products at defendants' manufacturing plant. *Id.*

B. Procedural history

On November 4, 2021, Candice filed suit against defendants in the United States District Court for the Central District of Illinois. Dkt. 1, Compl. Candice's operative amended complaint brings claims for negligence, fraudulent concealment, and loss of consortium. Dkt. 26, Am. Compl. Candice alleges defendants knew of vinyl chloride's carcinogenic properties but did not inform Rodney or other employees of the harm it posed. *Id.* ¶ 158. She alleges defendants failed to implement sufficient industrial hygiene controls or require employees to wear personal protective equipment to reduce or eliminate vinyl chloride's dangerous effects. *Id.* Candice also asserts her common law claims are not subject to the ODA's exclusive remedy regime because the Illinois General Assembly amended the statute in May 2019 to provide an exception to the exclusivity provisions for employees who could not collect statutory compensation due to any of the ODA's repose periods or provisions. *Id.* ¶ 23.

Defendants moved to dismiss, arguing Candice's claims are deficient as a matter of law because the ODA provides the exclusive remedy for occupational diseases like Rodney's, and that section 1(f) bars any compensation claim because Rodney's disablement occurred more than two years after his last hazardous exposure. Defendants further argued the recent

amendments to the ODA do not save Candice's claims by their own terms or, if they do, the amendments are unconstitutional because they revived otherwise time-barred claims. *See, e.g.*, Dkt. 30, Defs.' Mot. to Dismiss at 3.

The federal district court denied defendants' dismissal motions in their entirety. Dkt. 43, Order at 20 (Shadid, J.). In so holding, the district court determined the legislature's recent amendment to the ODA "no longer precludes tort recovery" for injured employees like Rodney whose right to statutory compensation benefits was barred by the ODA's repose provisions, including section 1(f). *Id.* at 12. The district court also rejected defendants' constitutional challenges to the ODA amendments, allowing Candice to proceed with her claims because doing so would not "offend state due process." *Id.* at 12-13.

At defendants' request, the district court certified two questions for interlocutory review to the United States Court of Appeals for the Seventh Circuit asking: (1) "whether 820 ILCS 310/1(f) is a statute of repose for purposes of § 310/1.1"; and (2) "whether applying 820 ILCS 310/1.1 to allow Plaintiff's civil case to proceed would violate Illinois's constitutional substantive due process." Dkt. 50, Order at 5-6; *Martin*, 95 F.4th at 481.

The Seventh Circuit believed this case actually presented three controlling questions, not two, each of which gave it "pause." *Martin*, 95 F.4th at 481. The Seventh Circuit thus certified three questions of law to this Court pursuant to Supreme Court Rule 20. *Id.* at 481-84.

ARGUMENT

Although the questions presented involve recent amendments to the ODA that no Illinois reviewing court has been asked to interpret, they are easily answered based on well-established law. The General Assembly amended the ODA to provide a remedy for injured employees with long-latency diseases after this Court denied relief under similar circumstances in *Folta v. Ferro Engineering*, 2015 IL 118070. Prior to the amendment, employees like Rodney who fell sick long after their last hazardous exposure would have been precluded from receiving compensation through the ODA. Their illness manifested too late to be compensable under the ODA. And employers could invoke the statute's exclusivity provisions if employees filed a civil action. The legislature thus enacted section 1.1, waiving the exclusive remedy provisions for claims as to which ODA benefits were precluded due to any repose period or provision established therein. Providing sick employees access to the courts when they otherwise would be left uncompensated was the General Assembly's clear intent.

Applying section 1.1 to claims that did not accrue until after the amendment's effective date would not, as defendants suggest, retroactively "strip" them of vested rights. The 2019 amendments do not interfere with defendants' ability to invoke the ODA's statutes of repose. In fact, Candice agrees any claim for compensation benefits under the ODA is time barred and cannot be revived after-the-fact. However, defendants *never* enjoyed a vested

right to assert the ODA's exclusivity provisions because that defense arises only after a claim accrues and a civil action filed. The legislature enjoys the power to modify—and even abolish—statutory defenses like the exclusive remedy provisions, and it did so here before Rodney's cancer diagnosis and death, and before Candice brought this case. Defendants' mere expectation that the law would remain unchanged cannot, as a matter of law, give rise to a vested right. Applying the amended ODA prospectively to this case thus does not violate our Constitution's due process guarantee.

I. Standard of review.

The certified questions concern the interpretation and constitutionality of a statute, which this Court reviews *de novo*. *W. Ill. Univ. v. Ill. Educ. Labor Rels. Bd.*, 2021 IL 126082, ¶ 32; *People v. Eubanks*, 2019 IL 123525, ¶ 34. The Court's primary objective when construing a statute is to ascertain and give effect to the intention of the legislature. *Cothron v. White Castle Sys., Inc.*, 2023 IL 128004, ¶ 20. The best indicator of legislative intent is the statutory language itself, given its plain and ordinary meaning. *Id.* Where the language is clear and unambiguous, courts apply the statute without resorting to further aids of statutory construction. *Id.* Only if the statutory language is ambiguous will courts look to other sources to ascertain the legislature's intent. *Id.* Nevertheless, courts "may consider the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another." *McDonald v. Symphony*

Bronzeville Park, LLC, 2022 IL 126511, ¶ 18. Courts presume that the General Assembly did not intend absurdity, inconvenience, or injustice. *Mich. Ave. Nat'l Bank v. Cnty. of Cook*, 191 Ill. 2d 493, 504 (2000).

All statutes carry a "strong presumption of constitutionality," and they must be upheld "whenever reasonably possible, resolving all doubts in favor of their validity." *Kopf v. Kelly*, 2024 IL 127464, ¶ 31 (cleaned up); *see People v. Mosley*, 2015 IL 115872, ¶ 40 ("We repeat that statutes enjoy a strong presumption of constitutionality, and we are *required to uphold* the constitutionality of a statute whenever reasonably possible") (emphasis added). The party challenging the statute "carries the burden to rebut clearly this strong judicial presumption" (*Moline Sch. Dist. No. 40 Bd. of Educ. v. Quinn*, 2016 IL 119704, ¶ 16), by "clearly establishing its unconstitutionality." *Arangold Corp. v. Zehnder*, 204 Ill. 2d 142, 146 (2003) (cleaned up).

II. The ODA, this Court's decision in *Folta*, and the legislature's response thereto.

This case ultimately centers around the legislature's 2019 amendments to the ODA passed in response to this Court's decision in *Folta*. Before turning to the certified questions, a discussion of the ODA, *Folta*, and the General Assembly's statutory amendments is both necessary and enlightening.

A. The ODA is a remedial statute enacted to provide financial protections for employees who contract diseases from workplace exposures to harmful substances.

Two remedial statutes protect Illinois employees injured in the workplace: the Workers' Compensation Act and the ODA. 820 ILCS 305/1 *et*

seq.; 820 ILCS 310/1 *et seq*. The Workers' Compensation Act is a "humane," "remedial" law aimed at promoting the "general welfare of the citizens of the state." *Kelsay v. Motorola, Inc.*, 174 Ill. 2d 172, 180-82 (1978). The Workers' Compensation Act "affords protection to workers by providing prompt and equitable compensation for workplace injuries." *Id.* at 181-82. The ODA was modeled after and designed to complement the Workers' Compensation Act, both of which were enacted during the same legislative session more than a century ago. *Labanoski v. Hoyt Metal Co.*, 292 Ill. 218, 221 (1920); *Dur-Ite Co. v. Indus. Comm'n*, 394 Ill. 338, 344-45 (1946).

The ODA covers injured employees who contract occupational diseases due to hazardous exposures in the workplace. *Labanoski*, 292 Ill. at 221; *Handley v. Unarco Indus., Inc.*, 124 Ill. App. 3d 56, 70 (4th Dist. 1984); *Luttrell v. Indus. Comm'n*, 154 Ill. App. 3d 943, 954 (2d Dist. 1987). Like the Workers' Compensation Act, the ODA's fundamental purpose is to provide employees and their dependents prompt, sure, and definite compensation, together with a quick and efficient remedy for injuries or death suffered in the course of employment. *Gen. Am. Life Ins. v. Indus. Comm'n*, 97 Ill. 2d 359, 370 (1983); *Hamilton v. Indus. Comm'n*, 326 Ill. App. 3d 602 (4th Dist. 2001), *aff'd*, 203 Ill. 2d 250 (2003). Courts liberally construe the ODA in order to effectuate its remedial purpose. *Gen. Am. Life Ins.*, 97 Ill. 2d at 370.

By enacting these statutes, the General Assembly established a new framework for recovery to replace the common-law rights and liabilities that

previously governed employee injuries. *Folta*, 2015 IL 118070, ¶ 11 (citing *Sharp v. Gallagher*, 95 Ill. 2d 322, 326 (1983)). In exchange for a system of no-fault liability for employers, employees are subject to statutory limitations on recovery for injuries and occupational diseases arising out of and in the course of employment. *Id.* ¶ 12; *see Zimmerman v. Buchheit of Sparta, Inc.*, 164 Ill. 2d 29, 44 (1994) ("[t]he [Act] reflects the legislative balancing of rights, remedies, and procedures that govern the disposition of employees' work-related injuries"); *Duley v. Caterpillar Tractor Co.*, 44 Ill. 2d 15, 18 (1969) ("The act was designed as a substitute for previous rights of action of employees against employers and to cover the whole ground of the liabilities of the master, and it has been so regarded by all courts") (cleaned up).

The statutory remedies afforded by the ODA and the Workers' Compensation Act "'serve as the employee's exclusive remedy if he sustains a compensable injury.'" *Folta,* 2015 IL 118070, ¶ 12 (citing *Sharp*, 95 Ill. 2d at 326-27 (quoting *McCormick v. Caterpillar Tractor Co.*, 85 Ill. 2d 352, 356 (1981)). Both statutes contain exclusive remedy provisions as "part of the *quid pro quo* in which the sacrifices and gains of employees and employers are to some extent put in balance, for, while the employer assumes a new liability without fault, he is relieved of the prospect of large damage verdicts." *McDonald*, 2022 IL 126511, ¶ 30 (cleaned up); *accord Meerbrey v. Marshall Field & Co.*, 139 Ill. 2d 455, 462 (1990). These provisions are found in sections 5 and 11 of the ODA. *See* 820 ILCS 310/5(a) ("Except as provided in Section

1.1, there is no common law or statutory right to recover compensation or damages from the employer … for or on account of any injury to health, disease, or death therefrom, other than for the compensation herein provided or for damages as provided in Section 3 of this Act."); *id.* § 11 ("Except as provided in Section 1.1, the compensation herein provided for shall be the full, complete and only measure of the liability of the employer bound by election under this Act …"). This Court has made clear that the exclusivity provisions are intended to prevent double recovery and the proliferation of litigation. *Collier v. Wagner Castings, Co.*, 81 Ill. 2d 229, 241 (1980).

But the ODA's exclusivity provisions are not absolute. This Court recognized four exceptions to the exclusivity provisions, namely, where an employee's injury "(1) was not accidental, (2) did not arise from his or her employment, (3) was not received during the course of employment or (4) was noncompensable under the [ODA]." *Id.* at 237; *Meerbrey*, 139 Ill. 2d at 463. As discussed below, the legislature fashioned a fifth exception in 2019.

The ODA also contains several repose provisions that bar recovery for untimely compensation claims. The first is found in section 1(f), which says "[n]o compensation shall be payable for or on account of any occupational disease unless disablement, as herein defined, occurs within two years after the last day of the last exposure to the hazards of the disease." 820 ILCS 310/1(f). The Seventh Circuit said that, "[p]ut in plain language, an employee cannot obtain compensation unless she becomes disabled within two years of

her last exposure to the hazard." *Martin*, 95 F.4th at 478-79. The Seventh Circuit noted that for section 1(f), "the timing of the claim filing is immaterial. It requires only that the disablement occurs within two years of exposure; the clock starts with the end of exposure and counts until disablement." *Id.* at 479.

The ODA's other repose provision is found in section 6(c), which provides "[i]n any case, other than injury or death caused by exposure to radiological materials or equipment or asbestos, unless application for compensation is filed with the Commission within 3 years after the date of the disablement, where no compensation has been paid, or within 2 years after the date of last payment of compensation, where any has been paid, whichever shall be later, the right to file such application shall be barred." 820 ILCS 310/6(c). In other words, as the Seventh Circuit observed, to recover ODA benefits a claimant must meet both temporal limitations in section 1(f) and section 6(c). *See Martin*, 95 F.4th at 479 (the section 6(c) period begins with "the disablement that caps off the [section] 1(f) period," and ends three years later).

The exclusivity and repose provisions are separate and distinct, addressing two separate proceedings and forms of recovery: civil actions seeking tort damages outside of the ODA, and administrative claims for statutory compensation benefits, respectively. Whereas sections 5 and 11 speak to "damages" and "civil liability" (820 ILCS 310/5(a); *id.* § 11), the ODA's repose provisions concern "compensation" recoverable under the statute, *id.* §§ 1(f) & 6(c). The legislature's decision to use different language in different

sections of the same statute means that "different meanings were intended." *Carber v. Bond/Fayette/Effingham Reg'l Bd. of Sch. Trs.*, 146 Ill. 2d 347, 353 (1992). The ODA's distinct references to damages and compensation in the exclusivity and repose provisions are thus not identical or interchangeable—contrary to what defendants argue here.

The exclusivity and repose provisions address separate issues. An employee wishing to recover compensation benefits under the ODA must comply with the statutory timeframes set forth in sections 1(f) and 6(c). Otherwise, their right to compensation is barred. And employers may raise the exclusivity provisions as an affirmative defense if an employee filed a civil action in the courts seeking to recover damages for their occupational disease. Before the 2019 amendments, the interplay between the ODA's repose and exclusivity provisions gave rise to harsh results in circumstances similar to those here.

B. This Court decides *Folta*, holding the ODA's exclusivity provisions barred the plaintiff's claims notwithstanding that benefits were barred by repose.

In 2015, this Court handed down its decision in *Folta v. Ferro Engineering*, 2015 IL 118070, which, as discussed below, prompted the legislature to amend the ODA. In *Folta*, the plaintiff filed suit against her husband's former employer (among others), alleging negligence and wrongful death claims based on the husband's workplace exposure to asbestos. *Id.* ¶¶ 3-

5. The husband contracted mesothelioma more than 40 years after his last exposure and died shortly thereafter. *Id.*

The employer moved to dismiss the claims against it, asserting the plaintiff's common-law claims were barred by the ODA's exclusive remedy provisions. *Id.* ¶ 4. The plaintiff disagreed, arguing the exclusivity provisions were inapplicable because, under the fourth *Meerbrey* exception, the claims were not "compensable" under the ODA as the husband's injury did not manifest until after the expiration of the 25-year repose period in section 6(c). *Id.* The trial court agreed with the employer and dismissed the plaintiff's complaint, finding the exclusive remedy provisions applied and the expiration of the repose period did not render the claims "noncompensable." *Id.* ¶ 6. The appellate court reversed, holding the husband's injury was "quite literally not compensable" under the ODA because the possibility of recovery was foreclosed due to the nature of the husband's injury and the fact that his mesothelioma did not manifest until after the statute of repose expired. *Id.* ¶ 7.

However, this Court reversed the appellate court and affirmed the trial court after concluding that the plaintiff's claims were barred by the ODA's exclusivity provisions. *Id.* ¶ 52. It was effectively undisputed that the plaintiff's claim for compensation benefits under the ODA was barred by the 25-year period of repose for asbestos exposures in section 6(c). *Id.* ¶ 34. It did not matter, this Court said, that the decedent "was not at fault for failing to file a claim sooner due to the nature of the disease," as that was irrelevant for a

statute of repose. *Id.* This Court held that "compensability" for purposes of that exception to exclusivity was defined by the type of injury and not by whether benefits were actually recoverable. *Id.* ¶ 36. The Court recognized the "harsh result in this case," but said "whether a different balance should be struck under the acts given the nature of the injury and the current medical knowledge about asbestos exposure is a question more appropriately addressed to the legislature." *Id.* ¶ 43. The General Assembly responded, striking a different balance four years later.

C. The General Assembly amends the ODA to address the "harsh result" in *Folta* that this Court called on the legislature to correct.

The legislature amended the ODA in direct response to this Court's decision in *Folta*. *See McDonald*, 2022 IL 126511, ¶ 38 n.3. Governor Pritzker signed Senate Bill 1596 into law on May 17, 2019, amending the ODA and the Workers' Compensation Act effective immediately. *See* Pub. Act 101-6 (eff. May 17, 2019). Relevant for purposes of this case, Senate Bill 1596 added section 1.1 and amended the ODA's exclusivity provisions to reflect this new change in the law. *See* 820 ILCS 310/1.1; 820 ILCS 310/5(a) ("Except as provided in Section 1.1…"); 820 ILCS 310/11 ("Except as provided in Section 1.1…"). As discussed below, section 1.1 waives the ODA's exclusivity provisions for employees who are injured or killed by 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." 820 ILCS 310/1.1.

The sponsors of Senate Bill 1596 made clear that amending the ODA in this manner was intended to address the "harsh" result in *Folta* that left the employee in that case and his widow without any recourse against the former employer. *See, e.g.*, 101st Ill. Gen. Assembly, House Tr., Mar. 14, 2019, at 42 (Rep. Hoffman acknowledging the supreme court in *Folta* did not "believe that their decision based on current law was something that was not harsh, they believed it was harsh, and they indicated in their decision that they believed the results were harsh. And they indicated to us that this question more appropriately needs to be address [*sic*] by the Legislature"); 101st Ill. Gen. Assembly, Senate Tr., Mar. 6, 2019, at 20 (Sen. Sims declaring "Senate Bill 1596 is in response to a request by the Illinois Supreme Court in [*Folta*] that the Illinois General Assembly address a glaring inequity in our … workers' compensation laws … which leaves workers who are exposed to asbestos or other cancer-causing materials without the ability to collect for their injuries under the current state of the law.").

The legislature also acknowledged that section 1.1 would not apply retroactively to cases pending when it went into effect, but would only apply to new cases where an employee contracted an occupational disease thereafter. The bill's sponsor, Representative Hoffman, said:

> So, the intent is to this Bill, it isn't retroactive in that it doesn't apply to cases currently pending. *It allows victims diagnosed after the Bill's effective date, so if you diagnosed after the Bill's effective date to pursue justice for their latent injuries*. So, in other words, that your – after the Bill's effective date if you're diagnosed after 25 years. So unfortunately, and some would say that unjustly, Mr. Folta's family would not receive any compensation as a result of this legislation.

101st Ill. Gen. Assembly, House Tr., Mar. 14, 2019, at 25 (stmt. of Rep. Hoffman) (emphasis added). The General Assembly also considered, but declined to adopt, an amendment that would simply extend the ODA's existing repose periods. The legislature decided against this to avoid interfering with employers' vested rights to invoke the repose defense for compensation claims that were time barred and could not be "revived" without offending due process. *See, e.g.*, 101st Ill. Gen. Assembly, House Tr., Mar. 14, 2019, at 16-17, 22-23 (stmts. of Rep. Hoffman); 101st Ill. Gen. Assembly, Senate Tr., Mar. 6, 2019, at 21-22 (stmts. of Sen. Sims).

Against this backdrop, it is apparent that the legislature intended to provide individuals like Rodney and Candice a remedy for occupational diseases where recovery of ODA benefits is barred by repose. And applying section 1.1 to the facts of this case is neither retroactive nor unconstitutional. It is instead supported by decades of this Court's precedent.

III. Section 1(f) of the ODA is a period of repose or repose provision.

The Seventh Circuit's first certified question asks whether section 1(f) is a "period of repose or repose provision" with respect to section 1.1. *Martin*, 95 F.4th at 482. Given the plain statutory language, the practical effect of

section 1(f), and an established body of reviewing court authority, the answer is clear: yes, it is.

A. Section 1(f) is a statute of repose because it extinguishes the right to compensation benefits if disablement does not occur within two years after the date of last exposure.

Section 1.1 of the ODA is entitled "permitted civil actions," and says:

> Subsection (a) of Section 5 and Section 11 [*i.e.*, the exclusivity provisions] 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.

820 ILCS 310/1.1 (emphasis added). Put differently, the General Assembly waived the ODA's exclusivity provisions for employees whose rights to compensation benefits under the statute are barred by any period of repose established therein. The question then becomes whether section 1(f) qualifies as "any period of repose or repose provision." It must.

Statutes of repose are "intended to terminate the possibility of liability after a defined period of time, regardless of a potential plaintiff's lack of knowledge of his or her cause of action." *Ferguson v. McKenzie*, 202 Ill. 2d 304, 311 (2001) (citing *Mega v. Holy Cross Hosp.*, 111 Ill. 2d 416, 422 (1986)); *accord Snyder v. Heidelberger*, 2011 IL 111052, ¶ 10. A statute of repose begins to run when a specific event occurs, no matter when the cause of action would

otherwise accrue. *Mega*, 111 Ill. 2d at 422. Unlike statutes of limitations, statutes of repose are not subject to the discovery rule. *Evanston Ins. v. Riseborough*, 2014 IL 114271, ¶ 16. A plaintiff's right to bring an action is thus "terminated when the event giving rise to the cause of action does not transpire within the period of time specified in the statute of repose." *Id.*

Section 1(f) provides:

> *No compensation shall be payable for or on account of any occupational disease unless disablement, as herein defined, occurs within two years after the last day of the last exposure to the hazards of the disease*, except in cases of occupational disease caused by berylliosis or by the inhalation of silica dust or asbestos dust and, in such cases, within 3 years after the last day of the last exposure to the hazards of such disease and except in the case of occupational disease caused by exposure to radiological materials or equipment, and in such case, within 25 years after the last day of last exposure to the hazards of such disease.

820 ILCS 310/1(f) (emphasis added).

Section 1(f) bars an employee's ability to receive compensation benefits under the ODA if disablement occurs too late. It does this by clearly saying no compensation shall be payable unless an employee's disablement occurs within two years from their last hazardous exposure. *Id.* Section 1(f) thus sets forth a specific event (final exposure) and extinguishes an employee's right to compensation benefits if disablement does not manifest within two years. That is precisely how a period of repose or repose provision operates. *Evanston Ins.*, 2014 IL 114271, ¶ 16.

The Seventh Circuit tacitly acknowledged this when it noted that for section 1(f) "the clock starts with the end of exposure and counts until

disablement." *Martin*, 95 F.4th at 479. Just like a statute of repose, section 1(f)'s "clock" begins with the employee's final exposure; it does not wait until the employee knows or should know that they have been wrongfully injured. Otherwise, section 1(f) would have used "date of disablement" language. Here, however, the legislature chose to use the "day of the last exposure" to mark the beginning of the section 1(f) repose period that, as discussed below, is not subject to the discovery rule.

Our reviewing courts have long held that section 1(f) is a statute of repose. For instance, in *Dickerson v. Industrial Commission*, the appellate court said in no uncertain terms that "*section 1(f) operates as a statute of repose* rather than one of limitations" because it does not contain a discovery rule and the court refused to read one into the statute. 224 Ill. App. 3d 838, 841 (5th Dist. 1991) (emphasis added). Another district of the appellate court agreed, similarly finding section 1(f) "*operates as a statute of repose* rather than one of limitations and Illinois courts have not hesitated to apply repose provisions despite the acknowledgement that an individual with a long latency disease may be barred from recovery." *Whitney v. Indus. Comm'n*, 229 Ill. App. 3d 1076, 1078 (3d Dist. 1992) (emphasis added).

In both of these cases, the appellate court held an employee's right to compensation benefits under the ODA was barred by section 1(f) because the employee's disablement occurred too late. *See Dickerson*, 224 Ill. App. 3d at 841-42 (holding section 1(f) barred the plaintiff's ability to recover ODA

compensation because he became disabled more than three years after his last exposure to silica dust); *Whitney*, 229 Ill. App. 3d at 1077-79 (widow could not recover ODA death benefits because the decedent's disablement occurred more than three years after his last asbestos exposure and was thus barred by section 1(f)). It did not matter that the employees' diagnoses occurred long after the repose period in section 1(f) expired because the critical date for determining the viability of their ODA claims was the date of last exposure. The appellate court also refused to read into section 1(f) a discovery rule because that rule does not apply to statutes of repose.

The appellate court has thus squarely addressed this issue and held for over three decades that section 1(f) is a period of repose or repose provision. This Court's decision in *Folta* is consistent with *Dickerson* and *Whitney,* and further supports reading section 1(f) as a period of repose. The Court in *Folta* referred to section 1(f) as a "statutory time limit[]," a "time limitation[]," and a "temporal limitation on the availability of compensation benefits[.]" 2015 IL 118070, ¶¶ 10, 38, 42. Given this authority and the inapplicability of the discovery rule, law and logic demand an understanding that section 1(f) is a repose provision because that it how the statute is drafted and operates in practice. *See In re Linda B.*, 2017 IL 119392, ¶ 36 n.10 ("the abductive process is probably never better put than in this common expression: If it looks like a duck, swims like a duck, and quacks like a duck, then it is probably a duck.").

Tellingly, defendants fail to acknowledge or distinguish *Dickerson* and *Whitney*. Ignoring this authority does nothing to advance their cause, especially because their so-called discrepancy in appellate court authority (discussed below) formed the basis for the Seventh Circuit's confusion, resulting in certification. *See Martin*, 95 F.4th at 482 (noting the appellate court's opinions "point in both directions," with some finding section 1(f) "operates as a statute of repose," while others describe the provision "as a condition precedent to recovery."). For the reasons discussed, Section 1(f) is a period of repose or repose provision. It can be nothing else.

Defendants nonetheless argue the ODA contains only a single statute of repose found in section 6(c). Defs.' Br. 17-18. Defendants believe section 1(f) "is a condition precedent to recovery under the ODA, not a statute of repose." Defs.' Br. 18.[3] To get there, defendants rely on several appellate court cases generally describing section 1(f) as a condition precedent to recovery. Defs.' Br. 18-20 (citing *Docksteiner v. Indus. Comm'n* (*Peabody Coal Co.*), 346 Ill. App. 3d 851, 856 (5th Dist. 2004); *Plasters v. Indus. Comm'n*, 246 Ill. App. 3d 1, 6-8 (5th Dist. 1993); *Goodson v. Indus. Comm'n*, 190 Ill. App. 3d 16, 18 (5th Dist. 1989); *Freeman United Coal Mining Co. v. Indus. Comm'n* (*Gower*), 263 Ill. App. 3d 478, 486 (5th Dist. 1994)). None of these cases support defendants' invitation

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[3] In the district court, Goodrich conceded "that it did not dispute § 1(f) as [*sic*] a repose provision." Dkt. 43, Order at 5. Before the Seventh Circuit, however, defendants reversed course and argued "Section 1(f) is a condition precedent, not a statute of repose." *See, e.g.*, Defs.' Br. 5-6, Case No. 23-2343 (7th Cir.).

to ignore both the form and substance of section 1(f). None of these cases are inconsistent with *Dickerson* and *Whitney*. And none of these cases suggest section 1(f) is not a period of repose or repose provision.

In *Docksteiner*, the appellate court described compliance with section 1(f) as "a condition precedent to recovery; whereas, section 6(c) is a statute of limitations." 346 Ill. App. 3d at 856. As discussed below, the *Docksteiner* court's description of section 1(f) as a "condition precedent" does not rule out that it is also a period of repose or repose provision under the ODA. The two concepts are fully consistent with one another. The *Docksteiner* court also did not address or disagree with previous authority—even within the same district of the appellate court—expressly holding that section 1(f) operates as a statute of repose. *See Dickerson*, 224 Ill. App. 3d at 841; *see also Whitney*, 229 Ill. App. 3d at 1078. It simply used different terminology that does not exclude section 1(f) from being both a condition precedent and a period of repose—which it is. Defendants' other authority is similar. *See Plasters*, 246 Ill. App. 3d at 7; *Goodson*, 190 Ill. App. 3d at 19-20; *Freeman*, 263 Ill. App. 3d at 486.

While the appellate court in these cases described section 1(f) as a condition precedent to recovery, as a matter of law and logic, complying with a statute of repose is necessarily a condition precedent to recovery. *See, e.g.*, 1 Trial Handbook for Ill. Lawyers – Civil § 5:6, Statutes of Repose (8th ed.) ("Compliance with a statute of repose is a condition precedent to a party's right to maintain a lawsuit"); 51 Am. Jur. 2d Limitation of Actions § 24, Operation

& Effect of Statutes of Repose ("A statute of repose establishes a condition precedent which must be satisfied for a cause of action to be recognized."). Put differently, one cannot even maintain a lawsuit without first timely filing a claim within any applicable statute of repose. The two concepts are thus mutually reinforcing, not mutually exclusive. *Docksteiner* and the other authority defendants rely upon certainly do not stand for the broad rule of law defendants assert here. And, in fact, they are fully consistent with *Dickerson*, *Whitney*, and *Folta*.

Contrary to what the Seventh Circuit believed, Illinois reviewing court decisions do not "point in both directions." *Martin*, 95 F.4th at 482. The reported authority instead uniformly points in a single direction: section 1(f) is a statute of repose *and* a condition precedent to recovery.

After turning a blind eye to authority contrary to their position, defendants argue that section 1(f) cannot be a period of repose or repose provision because, they say, this Court in *Folta* "explicitly" defined section 6(c) as a statute of repose, while merely referring to section 1(f) as "a temporal limitation[.]" Defs.' Br. 17. "Temporal limitation" is simply a more general characterization that must necessarily include a period of repose. Thus, referring to section 1(f) as a temporal limitation does not rule out that it is a repose provision. Nothing in *Folta* demonstrates—or even suggests—that this Court concluded section 1(f) is not a repose period or provision.

Equally importantly, defendants overlook or intentionally disregard the fact that this Court was more focused on section 6(c) because that provision was more specifically implicated by the facts of *Folta*. The plaintiff in *Folta* contracted mesothelioma four decades after being exposed to asbestos. The ODA treats asbestos somewhat differently than other hazardous substances. *See, e.g.*, 820 ILCS 310/1(f); *id.* § 6(c) ("[i]n cases of disability caused by exposure to … asbestos, unless application for compensation is filed with the Commission *within 25 years after the employee was so exposed*, the right to file such application shall be barred") (emphasis added). The point is that section 1(f) and the portion of section 6(c) at issue in *Folta* both operate as repose provisions because they eradicate an employee's ability to recover compensation under the ODA after the expiration of a defined period of time beginning with the date of last exposure.

Critically, claims filed within section 6(c)'s filing period (*i.e.*, within three years after disablement) would nonetheless be barred by section 1(f) unless the employee's disablement *also* manifested within the applicable repose period. *See Dickerson*, 224 Ill. App. 3d at 841-42 (holding section 1(f) barred the plaintiff's ability to recover ODA compensation because his application was filed more than three years after his last exposure to silica dust). In other words, an employee filing a benefits claim within three years after disablement may already be barred from collecting compensation under

section 1(f) because their injury did not manifest soon enough after the last date of exposure.

Defendants therefore incorrectly argue that Candice could have timely filed a claim for ODA benefits but did not. *See* Defs.' Br. 17-18 ("the three-year repose period for Plaintiff's claim under Section 6(c) did not expire until July 9, 2023"). Section 1(f) barred a compensation claim *four decades ago* when the repose period expired in the mid-1970s. It extinguished Rodney and Candice's ability to collect ODA compensation benefits after the expiration of a defined period of time despite when Rodney's injury arose.

Section 1(f) is thus, by its very nature, a repose provision. Defendants even concede that it is. *See, e.g.*, Defs.' Br. 29 (referring to section 1(f) as a "temporal repose" defense and a "temporal restriction period"); *id.* at 37 ("When Plaintiff failed to meet Section 1(f)'s terms *and the repose period expired*, Plaintiff lost the only right to pursue recovery under the ODA") (emphasis added); *id.* at 38 ("but also the *repose bar* that extinguished any such claim based on [Rodney's] occupational exposure when his injury did not manifest *within two years after the final exposure*") (emphasis added).

B. Defendants' interpretation violates black-letter law several times over.

As discussed, defendants fail to provide a reasonable explanation why this Court should find section 1(f) is not a repose period or repose provision. Defendants then contend that adopting Candice's interpretation "is untenable because it would eviscerate the well-balanced framework of the ODA" by

allowing claimants to "by-pass the Exclusivity Provisions and pursue tort recovery before the expiration of Section 6(c)'s repose periods[.]" Defs.' Br. 20 (emphasis omitted). More specifically, defendants argue section 1(f) cannot be a repose provision because holding otherwise would render "the repose period in Section 6(c), the condition precedent in Section 1(f), and the Exclusivity Provisions meaningless, and expos[e] employers to civil actions with the potential additional burdens of punitive damages and prejudgment interest in all cases where the condition precedent is not met[.]" Defs.' Br. 20-21 (emphasis omitted). Defendants are wrong.

As an initial matter, defendants essentially ask the Court to rewrite section 1.1 to say the exclusivity provisions do not apply when compensation benefits under the ODA would be precluded due to the operation of any period of repose or repose provision *in section 6(c).* But section 1.1 does not say that. The legislature did not say the only periods of repose or repose provisions are found "in section 6(c)," even though the General Assembly specifically refers to other sections of the ODA elsewhere in the statute. *See, e.g.*, 820 ILCS 310/2 ("shall relieve such employer of all liability under Section 3 of this Act"); *id.* § 3 ("pay compensation as provided in Section 2 of this Act"). Indeed, the legislature knows how to specifically refer to section 6(c) when it intends to. *See* 820 ILCS 310/4(a-1) (penalties provided under this subsection "must be imposed not later than one year after the expiration of the applicable limitation period *specified in subsection (c) of Section 6 of this Act*") (emphasis added). The

legislature's deliberate choice not to include the same language in section 1.1 must be respected here. *See Hines v. Dep't of Pub. Aid*, 221 Ill. 2d 222, 230 (2006) (courts may not "annex new provisions or substitute different ones, or read into the statute exceptions, limitations, or conditions which the legislature did not express.").

Adopting defendants' proffered interpretation would violate a cardinal rule of statutory interpretation by requiring the Court to read "in unstated exceptions, conditions, or limitations." *Manago ex rel. Pritchett v. Cnty. of Cook*, 2017 IL 121078, ¶ 10; *accord People v. Wells*, 2023 IL 127169, ¶ 31 (courts "may not add words or fill in perceived omissions."). That is precisely what defendants invite this Court to do, an invitation that should be declined.

Defendants' argument on this point fails for other reasons too. As discussed above, section 1.1 contemplates that the ODA contains numerous periods of repose or repose provisions, not just one. The statute clearly says that the exclusivity provisions do not apply to any injury or death resulting from an occupational disease where the recovery of compensation benefits under the ODA "would be precluded due to the operation of *any* period of repose or repose provision." 820 ILCS 310/1.1 (emphasis added).

The legislature's choice to qualify "period of repose or repose provision" with "any" connotes a broad interpretation. *See, e.g.*, *People v. Hudson*, 228 Ill. 2d 181, 193-94 (2008) (the legislature's use of the phrase "any injury" was found to be "expansive" and "broad"); *People v. Ellis*, 199 Ill. 2d 28, 39-40 (2002)

("any person" was deemed "broad and expansive"); Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/any (defining "any" as "one or some indiscriminately of whatever kind," "one, some, or all indiscriminately of whatever quantity," and "unmeasured or unlimited in amount, number, or extent").[4] "Any period of repose or repose provision" means just that: any of them, not just those found in section 6(c). This must necessarily include the repose provision found in section 1(f).

And contrary to defendants' ungrammatical contention, the word "any" modifies both "period of repose" and "repose provision." Defs.' Br. 22. These two phrases are not separated by punctuation and there is no other evidence that the legislature intended for "any" to modify one but not the other. *See Advincula v. United Blood Servs.*, 176 Ill. 2d 1, 27 (1996) ("Significantly, there is no punctuation setting this qualifying phrase apart from the sentence which precedes it, which might connote that the phrase was intended to modify more remote terms"); *accord In re E.B.*, 231 Ill. 2d 459, 468 (2008). Defendants' argument that "any" is limited to section 6(c) is thus wrong as a matter of grammar and law.

Defendants also claim that the legislature enacted section 1.1 to "reduce the 'harsh' impact of the 25-year statute of repose for asbestos-related diseases," which concerns the repose period "set out in Section 6(c), not in

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[4] This Court regularly refers to the Merriam-Webster Online Dictionary when interpreting statutes. *See, e.g.*, *Mosby v. Ingalls Mem'l Hosp.*, 2023 IL 129081, ¶ 39; *Rosenbach v. Six Flags Ent. Corp.*, 2019 IL 123186, ¶ 32.

Section 1(f)." Defs.' Br. 21-22. In so doing, defendants cherry-pick several statements from the legislative debates surrounding the 2019 amendments to the ODA. Defs.' Br. 22. This proves problematic for numerous reasons.

Candice refers to legislative history to corroborate the plain language of the 2019 amendments whereas defendants do so to deviate from that language, which is only appropriate in instances where a statute is deemed ambiguous. *People v. Grayer*, 2023 IL 128871, ¶ 20. But defendants have not argued section 1.1 is ambiguous—not in the district court, the Seventh Circuit, or in this Court. Their reliance on extraneous interpretive aides is thus improper.

Section 1.1 is clear on its face that the ODA's exclusivity provisions do not apply to "*any* injury or death 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*." 820 ILCS 310/1.1 (emphasis added). "Any" injury certainly includes those caused by asbestos. But it also refers to every other occupational disease subject to the ODA. *See Hudson*, 228 Ill. 2d at 193-94 ("any injury" given an "expansive" and "broad" interpretation); *accord Ellis*, 199 Ill. 2d at 39-40. The plain language of section 1.1 thus undermines defendants' contention that it only concerns asbestos-related injuries. If that were the case, the legislature could have specifically limited section 1.1 to asbestos. It did not, instead broadly referring to "any" injury or death.

Even if there were some ambiguity, the legislative history favors Candice, not defendants. The sponsor of Senate Bill 1596, Representative

Hoffman, clearly said the intent of the amendment was that "if you're exposed to some of these *asbestos* or you're exposed to *benzene*, or you're exposed to *radioactive waste*, or you're exposed *to whatever else is going to be put forward and spewed forward by businesses* in the future and that disease lays dormant for over 25 years, you should be able to recover even though – even though it doesn't manifest itself until after 25 years." 101st Ill. Gen. Assembly, House Tr., Mar. 14, 2019, at 9 (stmt. of Rep. Hoffman) (emphasis added); *see also id.* (stmt. of Rep. Hoffman) (agreeing that the Bill is not limited to mesothelioma); *id.* at 39 (stmt. of Rep. Hoffman) ("Well, we don't know what the future holds and we don't know what type of latent diseases may occur as a result of the exposure to other chemicals that may be taking place or have taken place. So I don't believe it's prudent to simply limit."); 101st Ill. Gen. Assembly, Senate Tr., Mar. 6, 2019, at 20 (stmt. of Sen. Sims) (Senate Bill 1596 "carves out exceptions in the provisions of the Workers' Compensation Act and the [ODA] where civil action under both Acts is not permissible" for "workers who are exposed to asbestos *or other cancer-causing materials*") (emphasis added). Arguing that section 1.1 applies only to asbestos-related diseases ignores both the plain statutory language and the legislature's stated reasons for amending the ODA. It is a fiction.

The Court should thus answer the first certified question in the affirmative: yes, section 1(f) is a period of repose or repose provision with respect to section 1.1. This is the only interpretation that respects the

legislature's clear intent and the only understanding expressly supported by decades of reviewing court authority.

IV. Section 1.1 applies prospectively to causes of action that accrue after the amendment went into effect on May 17, 2019.

The second certified question asks if section 1(f) falls within section 1.1, what is its temporal reach—either by its own terms or through section 4 of Illinois' Statute on Statutes? *Martin*, 95 F.4th at 484. In other words, does section 1.1 apply retroactively or prospectively? This question is easily answered: section 1.1 applies prospectively only and waives the ODA's exclusivity provisions for claims that accrue *after* it went into effect on May 17, 2019, and for which an employee's right to compensation benefits is already barred by any period of repose—including section 1(f). There is nothing retroactive about applying an amended statute to a new case filed thereafter.

Illinois courts traditionally used a two-step analysis when determining whether new or amended statutes applied retroactively (to pending cases) or prospectively (to new cases). *People ex rel. Alvarez v. Howard*, 2016 IL 120729, ¶ 19; *see Wheaton v. Suwana*, 355 Ill. App. 3d 506, 514-15 (5th Dist. 2005) (the two-step retroactivity analysis concerns whether "an amended statute applies to causes of action that *accrued before* and/or *were pending* when the statute was amended") (emphasis added). The first step asks "whether the legislature has clearly indicated the temporal reach of the amended statute." *Howard*, 2016 IL 120729, ¶ 19 (citing *Commonwealth Edison Co. v. Will Cnty. Collector*, 196 Ill. 2d 27, 38 (2001)). If so, "that expression of legislative intent must be

given effect, absent a constitutional prohibition." *Id.* If not, courts then proceed to the second step to determine "whether the statute would have a retroactive impact." *Id.*

This Court has explained that a statute has retroactive impact if it "would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed." *Id.* (cleaned up). An amendment may be applied to pending cases when it does not have retroactive impact. *Id.* On the other hand, courts presume the legislature intended amendments with retroactive impact to only apply to new cases filed thereafter. *Id.*

However, the Court recognized that this two-step analysis should be reduced to one step due to section 4 of the Statute on Statutes. *Id.* ¶ 20 (citing *Caveney v. Bower*, 207 Ill. 2d 82, 92 (2003)). Section 4 says:

> No new law shall be construed to repeal a former law, whether such former law is expressly repealed or not, as to any offense committed against the former law, or as to any act done, any penalty, forfeiture or punishment incurred, or any right accrued, or claim arising under the former law, or in any way whatever to affect any such offense or act so committed or done, or any penalty, forfeiture or punishment so incurred, or any right accrued, or claim arising before the new law takes effect, save only that the proceedings thereafter shall conform, so far as practicable, to the laws in force at the time of such proceeding. If any penalty, forfeiture or punishment be mitigated by any provisions of a new law, such provision may, by the consent of the party affected, be applied to any judgment pronounced after the new law takes effect. This section shall extend to all repeals, either by express words or by implication, whether the repeal is in the act making any new provision upon the same subject or in any other act.

5 ILCS 70/4.

Section 4 is a "general savings clause," which this Court has interpreted "as meaning that procedural changes to statutes will be applied retroactively, while substantive changes are prospective only." *Howard*, 2016 IL 120729, ¶ 20. If a statutory amendment does not expressly set forth its temporal reach, "then it is provided by default in section 4." *Id.* (citing *Caveney*, 207 Ill. 2d at 94).

Distinguishing between procedural and substantive changes "can sometimes be unclear." *Perry v. Dep't of Fin. & Prof'l Regul.*, 2018 IL 1223489, ¶ 69. Substantive changes in the law establish, create, define, or regulate rights, while procedural changes are "the machinery for carrying on the suit, including pleading, process, evidence, and practice." *GreenPoint Mortg. Funding, Inc. v. Poniewozik*, 2014 IL App (1st) 132864, ¶ 18 (cleaned up); *accord Perry*, 2018 IL 1223489, ¶¶ 69-70. A procedural change may also prescribe "a method of enforcing rights," providing the legal rules that direct the means to bring parties into court or the manner in which the matter proceeds. *Poniewozik*, 2014 IL App (1st) 132864, ¶ 18 (cleaned up). None of this matters for this case though.

Here, the General Assembly intended for section 1.1 to apply prospectively not retroactively. The legislature did not expressly indicate that section 1.1 applies to cases pending at the time of its enactment. *Compare* 820 ILCS 310/1.1, *with Lazenby v. Mark's Constr., Inc.*, 236 Ill. 2d 83, 95 (2010)

(statute "clearly expressed" legislative intent for retroactive application where it said "[t]his Section applies to all causes of action that have accrued, will accrue, or are currently pending before a court of competent jurisdiction, including courts of review."). Section 4 of the Statute on Statutes thus provides the "default" that section 1.1 applies prospectively to new cases filed after its effective date. 5 ILCS 70/4; *Howard*, 2016 IL 120729, ¶ 20. The parties seem to agree on this point while differing as to its significance. *See* Defs.' Br. 27.

Section 1.1 properly governs this case because, as discussed, Rodney's injury did not occur until December 2019, after the ODA amendments went into effect, meaning his (and Candice's) claims did not accrue until that point in time either. By the same token, Candice did not file suit until November 2021, making this a new action filed years after the amendment took effect. There was no pending case in which the amendment would be retroactively applied. Thus, as a matter of law, section 1.1 is being applied prospectively, as the legislature intended. *See Barajas v. BCN Tech. Servs., Inc.*, 2023 IL App (3d) 220178, ¶ 25 ("Applying a law enacted in 2015 to causes of action accrued in 2017 can only be characterized as prospective."); *Cotton v. Coccaro*, 2023 IL App (1st) 220788, ¶¶ 68-70, *pet. for leave to appeal den'd*, 468 Ill. Dec. 563 (2023) (statutory amendment imposing prejudgment interest in pending personal injury lawsuits beginning on the statute's effective date was "not retroactive in its application"); *First Midwest Bank v. Rossi*, 2023 IL App (4th) 220643, ¶¶ 201-05 (same); *accord Johnson v. Ames*, 2016 IL 121563, ¶ 19

(referendum altering eligibility requirements for candidates "in future elections has no retroactive impact" even though it concerned preceding events). Any other conclusion is simply wrong.

Defendants argue otherwise, claiming section 1.1 constitutes a "substantive change in the law" that cannot be applied to the facts of this case because, they say, it was enacted "after the events giving rise to the litigation and after certain rights have accrued[.]" Defs.' Br. 23. They claim section 1.1 "substantively changes the ODA, stripping employers like Defendants of their accrued right to invoke any temporal repose and exclusivity defenses provided in [the ODA] that vested more than four decades ago." Defs.' Br. 29. Not so.

This Court has long held that a "statute is not retroactive just because it relates to antecedent events, or because it draws upon antecedent facts for its operation." *U.S. Steel Credit Union v. Knight*, 32 Ill. 2d 138, 142 (1965); *accord Hayashi v. Ill. Dep't of Fin. & Prof'l Regul.*, 2014 IL 116023, ¶¶ 25-26; *Commonwealth Edison*, 196 Ill. 2d at 34; *People v. Valdez*, 79 Ill. 2d 74, 81 (1980); *Sipple v. Univ. of Ill.*, 4 Ill. 2d 593, 597 (1955). It is thus incorrect for defendants to claim that the amendments to the ODA have retroactive impact only because they relate to antecedent events or facts, like Rodney's prior exposure to vinyl chloride monomer. *See Midwest Generation, LLC v. Ill. Pollution Control Bd.*, 2024 IL App (4th) 210304, ¶ 218 (rejecting the defendant's retroactivity argument where it "has not offered any authority or argument suggesting the use of antecedent facts to determine when a rule

applies is a retroactive application of a law under a section 4 analysis."). Our reviewing courts have repeatedly rejected that misconception.

Contrary to defendants' assertions, not all of the "events giving rise to the litigation" occurred before the May 2019 amendment. Defendants seem to forget Rodney was diagnosed with cancer in December 2019 and died in July 2020. The claims at issue in this case did not accrue until well *after* the amendment went into effect. It is well-established that a cause of action accrues "when facts exist that authorize the bringing of a cause of action. Thus, a tort cause of action accrues when *all* its elements are present, *i.e.*, duty, breach, and resulting injury or damage." *Khan v. Deutsche Bank AG*, 2012 IL 112219, ¶ 20 (emphasis added); *accord Henderson Square Condo. Ass'n v. LAB Townhomes, LLC*, 2015 IL 118139, ¶ 52; *Brucker v. Mercola*, 227 Ill. 2d 502, 542 (2007). Where, as here, an injury is later developed by previous exposure to hazardous substances, a plaintiff's claims accrue when she "knows or reasonably should know both that an injury has occurred and that it was wrongfully caused[.]" *Nolan v. Johns-Manville Asbestos*, 85 Ill. 2d 161, 180 (1981).

Rodney's claim did not accrue when he was last exposed to vinyl chloride containing products in the mid-1970s. Exposure to harmful substances, standing alone, does not constitute an injury. *See Owens Corning Fiberglass Corp. v. Indus. Comm'n*, 198 Ill. App. 3d 605, 615 (4th Dist. 1990) ("If the legislature had intended the date of last exposure to the hazard of an

occupational disease to be the date of injury, it would have so stated…"). Rodney's claim instead arose following his cancer diagnosis in December 2019, months *after* the amendment's effective date. The relevant inquiry for assessing whether section 1.1 applies retroactively or prospectively is the date of Rodney's injury, *not* his last exposure.

Section 1.1 was thus the law in effect when Rodney became disabled and, accordingly, governs this case. *See, e.g.*, *Millis v. Indus. Comm'n*, 89 Ill. 2d 444, 451 (1982) ("the law in effect at the time of disablement governs an occupational disease proceeding"); *Olson v. Owens-Corning Fiberglas Corp.*, 198 Ill. App. 3d 1039, 1044 (1st Dist. 1990) ("Since plaintiffs' exposure (injury) occurred decades earlier but did not result in diagnosable injury (accrue) until after the January 1979 date, the statute expressly applies to the pending case"). This is settled law.

Defendants' cited authority misses the mark. Defs.' Br. 27-28. Each case relied on by defendants addressed whether a new law or amended statute could be applied to pending lawsuits. *See Caveney*, 207 Ill. 2d at 84-85 (tax payers claimed they were entitled to a refund under amended version of statute that went into effect while case was on appeal); *Bank of N.Y. Mellon v. Sperekas*, 2020 IL App (1st) 191168, ¶ 16 (bank argued statutory amendment that became effective during appeal should be applied retroactively); *Howard*, 2016 IL 120729, ¶ 1 (considering whether statutory amendment should be applied to a "pending criminal case"); *People v. Glisson*, 202 Ill. 2d 499, 501-02 (2002)

(deciding whether amended statute could be retroactively applied to vacate the defendant's criminal conviction); *Loch v. Bd. of Educ.*, 2007 WL 2973849, at *2-3 (S.D. Ill. Oct. 11, 2007) (the plaintiffs moved for reconsideration of a dismissal entered previously in the pending lawsuit based on an intervening change in the law). These cases are inapposite because none of them involved a new action that was filed after the legislature amended a statute. Defendants' authority instead addressed retroactive application of new law to active cases. Those facts are very different from these.

Defendants' arguments concerning their so-called "accrued" or "vested" defenses fare no better. First and foremost, "Illinois courts no longer utilize a vested rights analysis to determine temporal reach." *Perry*, 2018 IL 122349, ¶ 64. This Court has explained that considering whether a "right has vested necessarily involves an inquiry into retroactive impact, which would contravene this court's repeated holding that we do not reach step two of *Landgraf*." *Id.* A vested rights analysis is only appropriate where the legislature clearly intends for a statute to apply retroactively, "which *in turn* would take into account vested rights, as such rights are constitutionally protected." *Id.* (emphasis original).

As discussed, the General Assembly intended for section 1.1 to apply prospectively. Defendants thus put the cart before the horse, meaning their "impact-before-intent" analytical approach "no longer finds support in Illinois law." *Id.* If vested rights are relevant here, it is *only* with respect to whether

section 1.1 violates defendants' right to due process under the Illinois Constitution. And as discussed below (*see infra* § V), defendants never enjoyed a vested right in the ODA's exclusivity provisions so their contrary assertions and constitutional challenges fail as a matter of law.

The answer to the second certified question is that section 1.1 prospectively waives the ODA's exclusivity provisions for claims accruing after its effective date for employees who cannot collect statutory compensation benefits due to any period of repose or repose provision in the ODA.

V. Applying section 1.1 to the facts of this case does not violate due process because it does not deprive defendants of a vested right.

The Seventh Circuit's third and final certified question asks this Court: "[w]ould the application of [section] 1.1 to past conduct offend Illinois's due process guarantee?" *Martin*, 95 F.4th at 484. Respectfully, the third question does not adequately frame the issue presented here. This Court should thus accept the Seventh Circuit's invitation "to reformulate our questions" if deemed necessary to avoid "limit[ing] the scope" of the Court's review. *Id.*

As discussed below, defendants never enjoyed a vested right in the ODA's exclusive remedy provisions. The legislature thus had the authority to modify or abolish this defense without offending due process. The General Assembly lawfully exercised that power here, waiving the exclusivity provisions for employees whose ODA benefits claims were barred by the statute's repose provisions. Applying section 1.1 to the facts of this case to claims that accrued *after* the amendment's effective date does not, as the

Seventh Circuit's question suggests, improperly concern past conduct. Rather, this Court should resolve whether applying the law in effect at the time a claim accrues offends due process guarantees. It does not.

A. The due process clause does not protect expectancies based on prior law in which defendants do not possess a vested right.

The amendments to the ODA are afforded a "strong presumption of constitutionality," and this Court is "required to uphold the constitutionality of a statute whenever reasonably possible." *Mosley*, 2015 IL 115872, ¶ 40. As discussed below, defendants have not and cannot overcome their burden to rebut this strong presumption by "clearly establishing its unconstitutionality." *Arangold*, 204 Ill. 2d at 146.

The due process clause of the Illinois Constitution prohibits the legislature from interfering with a party's vested rights. *M.E.H. v. L.H.*, 177 Ill. 2d 207, 214-15 (1997) (citing *Bd. of Educ. of Normal Sch. Dist. v. Blodgett*, 155 Ill. 445-50 (1895)); Ill. Const. 1970, art. I, § 2. "Although not capable of precise definition, a vested right is a complete and unconditional demand or exemption that may be equated with a property interest." *Henrich v. Libertyville High Sch.*, 186 Ill. 2d 381, 405 (1998) (cleaned up). A vested right must be "something more than a mere expectation, based upon an anticipated continuance of the existing law." *Orlicki v. McCarthy*, 4 Ill. 2d 342, 347 (1954). Where, as here, "no vested rights are involved, either because they are *not yet perfected* or because the legislative amendment is procedural in nature, an

amendment can be applied" without offending due process. *See Harraz v. Snyder*, 283 Ill. App. 3d 254, 262 (2d Dist. 1996) (emphasis added); *accord In re T.Y.*, 334 Ill. App. 3d 894, 907 (1st Dist. 2002); *Taylor v. Cnty. of Peoria*, 312 Ill. App. 3d 470, 472 (3d Dist. 2000). This rule of law applies to causes of action and defenses alike. *Henrich*, 186 Ill. 2d at 404-05.

Defendants claim applying section 1.1 to this case violates due process because doing so "strips" them of the repose and exclusivity defenses they supposedly enjoyed since the mid-1970s. Defs.' Br. 29. Defendants confuse and obfuscate the issue. The *only* vested right defendants may enjoy is the right to rely on the ODA's repose provisions that barred Candice's ability to collect statutory compensation benefits. This Court has held that a defendant gains a vested right in a repose defense when the period of repose expires. *Doe A. v. Diocese of Dallas*, 234 Ill. 2d 409 (2009). That is a nonissue here.

Importantly, the 2019 amendments did *not* impact defendants' right to invoke the ODA's repose provisions whatsoever. Candice does not dispute that her right to seek compensation benefits is barred and cannot be revived through subsequent legislation. Defendants enjoyed a vested right in the statute of repose defense when Rodney's disablement did not occur within two years of the date of his last hazardous exposure, but that would only bar recovery of compensation benefits, not civil damages.

Defendants' belief that they enjoy vested rights in the exclusivity provisions is unsupported, if not fanciful. To get there, defendants conflate the

right to recover compensation benefits under the ODA with the award of damages in a civil action. Defs.' Br. 37, 44. Defendants then incorrectly assert that they gained a "vested right" in the "exclusivity defense" after Candice purportedly "failed to meet Section 1(f)'s terms and the repose period expired[.]" Defs.' Br. 37. Defendants cite no authority supporting their novel argument that such a right vested—because it never did.

Defendants do not now, nor have they ever enjoyed, a vested or accrued right to assert the ODA's exclusivity provisions. Other than a statute of repose, a defense self-evidently cannot "vest" until the claim itself accrues. Defendants' ability to rely on the exclusivity provisions would vest—if at all—when Rodney was injured in December 2019. *See Henrich*, 186 Ill. 2d at 405 (the defendant's statutory immunity defense "vested when the cause of action accrued."). But, by that time, the legislature enacted section 1.1, thereby waiving the exclusivity defense that defendants never enjoyed or had the ability to invoke. The General Assembly surely has this power.

This Court has previously upheld legislative amendments to the Workers' Compensation Act to remove defenses thereto. For example, in *Deibeikis v. Link-Belt Co.*, the Court upheld the legislature's choice to remove various common law defenses such as assumption of the risk and contributory negligence. 261 Ill. 454, 464-65 (1914). The Court reasoned that those defenses were not established by the Constitution, meaning "the legislature may modify them or abolish them entirely if it sees fit to do so." *Id.* at 464. The legislature's

power to abolish these defenses, this Court said, "cannot be seriously questioned." *Id.*; *accord Strom v. Postal Telegraph-Cable Co.*, 271 Ill. 544 (1916) (finding it was "no longer an open question in this state" that the legislature has the power to "modify" or "abolish" defenses under the Workers' Compensation Act). It is not subject to reasonable debate that the General Assembly may modify or remove an affirmative defense that it created in the first place.

The same holds true for the ODA's exclusive remedy provisions. This Court has consistently found that the exclusivity provisions are akin to an affirmative defense and as such "an employer may decide against invoking the Act in the hope that the plaintiff's common law negligence claim will fail," allowing the plaintiff to proceed with his common law claim and giving the employer the chance of escaping liability completely. *Geise v. Phoenix Co. of Chi., Inc.*, 159 Ill. 2d 507, 514 (1994); *accord Doyle v. Rhodes*, 101 Ill. 2d 1, 10 (1984) (collecting cases finding that the Workers' Compensation Act's exclusivity provisions are a defense that "is an affirmative one whose elements—the employment relationship and the nexus between the employment and the injury—must be established by the employer, and which is waived if not asserted by him in the trial court"). Defendants therefore could not have any right to the exclusivity provisions before Rodney's cancer diagnosis in December 2019. Without a claim to defend against, defendants had no defense to invoke.

Similarly, the ODA's exclusivity provisions are statutory in nature and, as a matter of law, there is no vested right in the mere continuance of a law. *Envirite Corp. v. Ill. E.P.A.*, 158 Ill. 2d 210, 215 (1994); *People ex rel. Sklodowski v. State*, 182 Ill. 2d 220, 232 (1998). This is so because the "legislature has an ongoing right to amend a statute." *Envirite Corp.*, 158 Ill. 2d at 215; *accord Jones v. Mun. Emps.' Annuity & Ben. Fund of Chi.*, 2016 IL 119618, ¶ 39. Finding otherwise would "drastically limit" the legislature's "essential powers[.]" *A.B.A.T.E. of Ill., Inc. v. Quinn*, 2011 IL 110611, ¶ 34 (cleaned up). It is thus presumed "that laws do not create private contractual or vested rights, but merely declare a policy to be pursued until the legislature ordains otherwise." *Jones*, 2016 IL 119618, ¶ 40; *accord Sklodowski*, 182 Ill. 2d at 231-32. Defendants' mere expectation that the exclusivity provisions would remain unchanged therefore cannot establish a vested right here, especially when their supposed "right" could not accrue before the amendments took effect in May 2019.

The law is thus clear that, so long as no vested rights are involved, the legislature may properly remove claims and defenses under the Workers' Compensation Act. And for the reasons previously discussed, this rule of law proves dispositive here. The General Assembly properly waived a statutory affirmative defense under certain circumstances in which defendants never enjoyed a vested interest—just a mere expectancy under the previous law.

This renders defendants' reliance on case law involving statutes of limitations and repose inapposite. *See* Defs.' Br. 31-35 (citing *M.E.H.*, 177 Ill. 2d at 218; *Doe A.*, 234 Ill. 2d at 411-42; *Sepmeyer v. Holman*, 162 Ill. 2d 249, 254 (1994)). All of these cases involved circumstances in which the legislature amended a statute that would have revived an otherwise time-barred claim, thereby extinguishing a vested right that accrued when the limitations period expired. *See M.E.H.*, 177 Ill. 2d at 214-15 ("once a statute of limitations has expired, the defendant has a vested right to invoke the bar of the limitations period as a defense to a cause of action."); *Doe A.*, 234 Ill. 2d at 410 ("plaintiff's cause of action was already time-barred under that version of the law by the time plaintiff filed suit," meaning a subsequent amendment "could not be applied to revive plaintiff's claims."); *Sepmeyer*, 162 Ill. 2d at 256 ("our jurisprudence recognizes that statutes limiting the time to bring an action create vested rights enjoying constitutional protection from legislative interference."). This case does not involve a vested right to a limitations defense.[5]

Contrary to defendants' contention (Defs.' Br. 35-36), the legislature was well aware of this Court's decisions in cases like *Doe A.* and *M.E.H.* and wisely declined a legislative fix that would have run afoul of the Illinois Constitution.

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[5] *Amici curiae* the U.S. and Illinois Chambers of Commerce also refer to cases from sister states involving legislative interference with vested rights in statutes of limitations and repose. Chambers Br. 10-13. These cases are all distinguishable for the same reasons.

See Burrell v. S. Truss (Wood River Twp. Hosp.), 176 Ill. 2d 171, 176 (1997) ("Where statutes are enacted after judicial opinions are published, it must be presumed that the legislature acted with knowledge of the prevailing case law."). As previously discussed, the General Assembly elected against extending the ODA's limitations periods to *avoid* infringing on employers' vested rights. *See supra* 16-17. The General Assembly instead chose to lawfully exercise its power by removing an unvested defense to exclusivity for claims accruing after the ODA amendments went into effect in May 2019.

For these reasons, this case does not concern vested rights, only unvested (and unprotected) expectations that the exclusivity defense would persist unchanged. The due process clause offers defendants no relief here. *See Doe A.*, 234 Ill. 2d at 410 (where the legislature eliminated a statute of repose before it expired "any right to repose defendants may ultimately have been able to claim under the 1991 version of the law never vested and conferred on defendants no constitutional protections"); *accord Arnold Eng'g, Inc. v. Indus. Comm'n*, 72 Ill. 2d 161, 165 (1978).

This may render it unnecessary for this Court to answer the Seventh Circuit's third question. It is well-settled that "courts should avoid constitutional questions when a case can be decided on other grounds." *Innovative Modular Sols. v. Hazel Crest Sch. Dist. 152.5*, 2012 IL 112052, ¶ 38 (citing *People v. Alcozer*, 241 Ill. 2d 248, 253 (2011)). This Court may (and probably should) avoid reaching the merits of defendants' constitutional

challenge. Defendants never enjoyed a vested right in the exclusivity provisions. The due process clause is thus inapplicable here and the case may be decided on non-constitutional grounds. *See In re Miller*, 2023 IL App (1st) 210774, ¶ 51 (declining to decide whether statutory amendment violated the due process clause under the constitutional avoidance doctrine where no vested rights were involved). Should the Court find it appropriate to decide the constitutional question, it should answer the third certified question in the negative: no, section 1.1 does not violate defendants' right to due process under the Illinois Constitution.

B. Section 1.1 does not "create" new liabilities, duties, or claims.

Defendants also argue throughout their brief that section 1.1 has impermissible retroactive impact because it supposedly creates "new liability," "new duties," and a "new" cause of action. *See, e.g.*, Defs.' Br. 28, 38. Untrue.

The legislature has the power to adjust available remedies without offending due process. *See Cotton*, 2023 IL App (1st) 220788, ¶ 70 ("The General Assembly may change or abolish remedies without infringing on a constitutional right."); *accord Grasse v. Dealer's Transp. Co.*, 412 Ill. 179, 190 (1952). This Court recognized more than a century ago that there is "no vested right in any particular remedy or in any special mode of administering it." *Woods v. Soucy*, 166 Ill. 407, 414-15 (1897). The Court also found that where the legislature "merely changes the remedy or the law of procedure, all rights

of action will be enforceable under the new procedure without regard to whether they accrued before or after such change in the law." *Id.*

The legislature may even retroactively adjust available remedies for pending litigation without upsetting a party's vested or constitutional rights. In *Dardeen v. Heartland Manor, Inc.*, 186 Ill. 2d 291 (1999), the Court considered a statutory amendment altering available remedies for violations thereof. The Court determined that a mid-litigation amendment to the Nursing Home Care Act that limited a plaintiff's recoverable damages "related solely to a remedy and does not affect a vested right." *Id.* at 298-99. The Court therefore found the General Assembly did not deprive the plaintiff of a vested interest subject to constitutional protections.

Here, the pre-2019 remedy for causing an occupational disease was a claim for compensation benefits under the ODA. After the 2019 amendment, employees with occupational diseases were given an alternative remedy—a civil tort claim—where an ODA claim is precluded by any period of repose or repose provision. The removal of the ODA's exclusive remedy provisions created no new obligations or duties for employers; it merely adjusted the remedies for employees and their family members. It fixes the *Folta* problem. To the extent defendants argue the legislature's amendments to the ODA impermissibly alter or interfere with available remedies in occupational disease cases, their arguments lack merit.

Nor does the amended ODA impose new duties on employers or establish new liabilities. Even before the relevant amendments to the ODA, employers were required to exercise reasonable care to provide a reasonably safe workplace and to protect their employees' safety. *See, e.g., Coselman v. Schleifer*, 97 Ill. App. 2d 123, 127 (2d Dist. 1968). The law imposed and imposes upon employers a duty to refrain from exposing their employees to hazardous materials that cause occupational diseases, which is why an occupational disease arising out of and in the course of employment is within the scope of the ODA to begin with. *Folta*, 2015 IL 118070, ¶¶ 24-25. The same duty of care has always governed hazardous exposures in the workplace.

Contrary to defendants' assertions, employers have *always* been exposed to potential civil liability for an employee's occupational disease even before the 2019 amendments. As discussed, the exclusivity provisions are affirmative defenses employers may choose to forego. *See supra* 45. This Court has thus recognized that the "potential for tort liability exists until the [exclusivity] defense is established." *Doyle*, 101 Ill. 2d at 10. The liability was there, but employers could invoke the exclusivity provisions to defeat a civil claim.

The amendments did not create anything new. The legislature instead removed affirmative defenses that, as discussed, defendants had no vested right to invoke. Section 1.1 therefore does not retroactively create new duties, liabilities, or claims that were previously unknown.

C. Defendants and their *amici*'s remaining arguments are unconvincing.

Defendants and their *amici* offer other reasons why this Court should answer the certified questions in their favor. None are persuasive.[6]

Defendants and their *amici* discuss at length the importance of statutes of repose, highlighting several of them in various contexts (*e.g.*, negligent construction claims, legal malpractice claims, and medical negligence claims). Defs.' Br. 38-43; Chambers Br. 7-9. Those pages are not well spent. Candice does not challenge the importance of limitations periods or claim they may be unconstitutionally interfered with through subsequent legislation that revives otherwise time-barred claims. Candice concedes the ODA's repose provision in section 1(f) bars her ability to collect compensation benefits. The *amici*'s arguments are beside the point.

Defendants' reliance on the Tennessee Court of Appeals' decision in *Wyatt v. A-Best Products Co.*, 924 S.W.2d 98 (Tenn. Ct. App. 1995), is similarly misplaced. Defs.' Br. 42-43. *Wyatt* asked whether the Tennessee legislature could, consistent with that state's constitution, enact an asbestos-specific exception to the Tennessee Products Liability Act's ten-year statute of repose

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[6] *Amicus curiae* the Illinois Defense Counsel claims section 1.1 violates the Illinois Constitution's prohibition against special legislation. IDC Br. 12-14. This is a proverbial kitchen-sink argument. This issue was not among those certified by the Seventh Circuit and defendants did not raise it. The Court should thus disregard IDC's argument in this respect. *See A.O. Smith Corp. v. Indus. Comm'n*, 109 Ill. 2d 52, 58 (1985) (declining to consider issue raised by *amici* that was "not an issue in this appeal").

after the repose period expired for the plaintiff's claims. The *Wyatt* court held the legislature could not "retroactively revive [the plaintiff's] already-barred cause of action." *Id.* at 104. That holding is consistent with Illinois law but has no relevance whatsoever here.

Unlike this case, the Tennessee statute at issue in *Wyatt* did not address an exclusivity provision for redress through a workers' compensation regime. The *Wyatt* case also did not analyze the interplay between a repose bar for "compensation benefits," and whether the legislature could waive an exclusive remedy provision for civil claims when the right to seek compensation benefits expired before a plaintiff's injury developed. That is the heart of this case and something *Wyatt* does not speak to. It provides defendants no support.

Defendants and their *amici* also suggest that if the Court finds section 1.1 allows Candice to seek redress in the courts, the proverbial "floodgates" of litigation would open for other occupational disease claims defendants believe are "stale" and time-barred, subjecting employers to "new and seemingly endless liabilities." Defs.' Br. 29-30, 43-44; Chambers Br. 8-9. Neither defendants nor their *amici* explain the extent to which otherwise "stale" claims would supposedly inundate the courts, making their fears entirely speculative. *See Dew-Becker v. Wu*, 2020 IL 124472, ¶ 18 (rejecting argument that abiding by the statute's plain language would "open the floodgates of litigation" as unsupported speculation).

In any event, the legislature clearly intended to provide access to the

courts for sick employees who cannot receive compensation through the ODA. This is a feature—not a bug—of which the General Assembly was undeniably aware. *See id.* (noting that "[a]ny increase in litigation" was not an "absurd result but, rather, the explicit purpose of the statute."); *State ex rel. Leibowitz v. Family Vision Care, LLC*, 2019 IL App (1st) 180697, ¶ 31 (rejecting a similar "floodgate" argument concerning the Insurance Claims Fraud Protection Act, and finding that to effectuate the statute's purpose, individuals "must be able to bring a complaint"). If defendants believe a different balance should be struck here, that request is more "appropriately addressed to the legislature." *Folta*, 2015 IL 118070, ¶ 43.

Defendants and their *amici* also argue that interpreting section 1.1 to allow Candice's claims to proceed would interfere with prior "business decisions" regarding potential liabilities and insurance coverage. Defs.' Br. 43; Chambers Br. 7-8; IDC Br. 5. Defendants repeat their faulty argument that "any potential claim, in any forum, arising from [Rodney's] exposures was forever barred from accruing after early 1976." Defs.' Br. 43 (emphasis omitted). But defendants are wrong once more.

As discussed, the only thing that was "forever barred" in 1976 was Rodney and Candice's ability to collect compensation benefits under the ODA because that was when the repose period in section 1(f) expired. A compensation benefits claim is not the same as a civil cause of action. And the civil claim did not arise until December 2019 when Rodney was diagnosed with

liver cancer. The legislature had already amended the ODA to remove the exclusivity protections for plaintiffs like Rodney and Candice.

Defendants' so-called "business decisions" are also irrelevant because they were based on nothing more than a mere expectation that the ODA's exclusivity provisions would remain unchanged. This Court has long held that occupational disease proceedings are governed by the law in effect at the time of disablement, *not* at the time of last exposure. *See, e.g.*, *Millis*, 89 Ill. 2d at 451. Defendants were thus well aware that the legislature could amend the ODA in the future, upsetting earlier expectations based on prior law. To the extent defendants incorrectly believed the law would remain the same forever, they have no one to blame but themselves. Bad business should not make bad law. Neither the Statute on Statutes or the due process clause protects this faulty expectation. The Illinois Constitution does, however, guarantee Rodney and Candice a remedy in the law to redress harms that defendants wrongfully caused.

CONCLUSION

The legislature addressed an inequity in the ODA following the harsh result in *Folta*. At this Court's invitation, the General Assembly struck the balance it saw fit to allow employees with long-latency diseases to be free from the ODA's exclusivity provisions where they would otherwise be denied the right to recover compensation benefits due to the application of the statute's several repose provisions, including section 1(f). It was free to do so. This

deliberate legislative choice does not, as defendants suggest, retroactively eradicate their vested or accrued rights.

Defendants may still invoke the ODA's repose provisions that barred the recovery of statutory compensation benefits decades ago. But defendants *never* enjoyed a vested right in the ODA's exclusivity provisions because that defense cannot arise until Rodney became disabled and his claims accrued, both of which occurred *after* the General Assembly amended the ODA to waive the exclusivity provisions. Applying the law in effect at the time those claims accrued is, by its very nature, prospective not retrospective. Upholding the ODA amendments will not upset the no-fault compensation regime established by the Workers' Compensation Act and the ODA. Rather, it will provide Candice with a remedy in the law that our Constitution guarantees her.

For all of these reasons, this Court should answer the United States Court of Appeals for the Seventh Circuit's three certified questions as follows:

1. Yes, section 1(f) of the ODA is a period of repose or repose provision with respect to section 1.1;

2. Section 1.1 applies prospectively only, waiving the ODA's exclusivity provisions for claims accruing on and after its effective date that are also barred by any period of repose or repose provision in the ODA, including section 1(f); and

3. No, applying section 1.1 to the facts of this case does not violate defendants' right to due process under the Illinois Constitution.

The legislature amended the ODA so those like Rodney and Candice have an opportunity to seek justice in our courts. Candice respectfully asks this Court to allow that justice to be done.

Dated: August 23, 2024

Respectfully submitted,

Candice Martin, Individually, and as Executrix of the Estate of Rodney Martin, deceased,

By: */s/ J. Timothy Eaton*
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CERTIFICATE OF COMPLIANCE

The undersigned, an attorney, certifies that Appellee's Brief conforms to the requirements of Illinois Supreme Court Rule 341. The length of this Brief, excluding the words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters appended to the brief under Rule 342(a) is 14,175 words.

Dated: August 23, 2024

/s/ J. Timothy Eaton

No. 130509

In the
Supreme Court of Illinois

Candice Martin, Individually, and as Executrix of the Estate of Rodney Martin, deceased,

Plaintiff-Appellee,

v.

Goodrich Corporation f/k/a B.F. Goodrich Company, and PolyOne Corporation, Individually and as Successor-By-Consolidation to the Geon Company n/k/a Avient Corporation,

Defendants-Appellants.

Questions of Law Certified by the United States
Court of Appeals for the Seventh Circuit, Case No. 23-2343,
There on appeal from the United States District Court
for the Central District of Illinois, Case No. 1:21-cv-01323,
Honorable James E. Shadid, Judge Presiding

NOTICE OF FILING

TO: ***See Attached Certificate of Service***

PLEASE TAKE NOTICE that on the **23rd day of August, 2024**, we caused to be filed (*submitted electronically*) with the Supreme Court of Illinois, ***Appellee's Brief,*** a copy of which is hereby served upon you.

Dated: August 23, 2024

Respectfully submitted,

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The undersigned, pursuant to the provisions of Section 1-109 of the Code of Civil Procedure, and Ill. S. Ct. R. 12 hereby certifies and affirms that the statements set forth in this instrument are true and correct, and that a true and accurate copy of this ***Notice of Filing*** and ***Appellee's Brief,*** were served upon all parties of record via electronic mail, on August 23, 2024:

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