GEORGEANNA M. BICKMORE
(Appellee)

v.

JOHNSON OUTDOORS, INC., d/b/a OLD TOWN CANOE
(Appellee)

and

SENTRY INSURANCE
(Insurer/Appellee)

v.

JOHNSON OUTDOORS, INC., d/b/a OLD TOWN CANOE
(Appellant)

and

TRAVELERS INSURANCE CO.
(Insurer/Appellant)

Argued: January 25, 2017
Decided: May14, 2018

PANEL MEMBERS: Administrative Law Judges: Elwin, Jerome, and Knopf
BY: Administrative Law Judge Knopf

[¶1] Johnson Outdoors, Inc., d/b/a Old Town Canoe, insured by Travelers Indemnity Co. (OTC/Travelers), appeals from a decision of a Workers' Compensation Board Administrative Law Judge (*Hirtle, ALJ*) that (1) granted Georgeanna Bickmore's Petition for Award for a May 31, 2012, work injury; and (2) granted a Petition for Award related to a May 18, 2004, work injury filed by Old Town Canoe, insured by Sentry Insurance (OTC/Sentry), requiring

OTC/Travelers to reimburse OTC/Sentry for 50% of the benefits paid to Ms. Bickmore. The ALJ determined that the most recent amendment to the Workers' Compensation Act's statute of limitations, P.L. 2011, ch. 647, § 18 (effective August 30, 2012, codified at 39-A M.R.S.A. § 306(1) (Supp. 2017)) ("2012 amendment"), does not apply retroactively to the claim for the 2004 injury against OTC/Travelers, and that the applicable statute of limitations, 39-A M.R.S.A. § 306 (Supp. 2011), did not bar OTC/Sentry's claim against OTC/Travelers. We disagree with the ALJ's conclusion, and vacate the decision insofar as it grants the petitions related to the 2004 date of injury.

I. BACKGROUND

[¶2] Georgeanna Bickmore went to work for Old Town Canoe in 1998, first through an employment agency and then, beginning in 2000, as an employee. On May 18, 2004, Ms. Bickmore suffered a work-related injury to her left wrist. At that time, OTC was insured by Travelers. Ms. Bickmore was ultimately diagnosed with work-related, bilateral carpal tunnel syndrome. She was treated for this condition and missed no time from work. OTC/Travelers made its last medical payment for this injury on December 28, 2004. It was not required to and did not file a first report of injury at that time.

[¶3] Ms. Bickmore continued to suffer wrist symptoms that were apparently tolerable until her job changed in 2011 to one requiring more repetitive

manipulation of small parts. She began treating for her wrist condition again, and underwent bilateral carpal tunnel release surgery in May and June of 2013. OTC was insured by Sentry at that time. OTC/Sentry assigned May 31, 2012, as the date of injury, and voluntarily paid Ms. Bickmore wage loss benefits from September 21, 2012, through January 2, 2013, and May 17, 2013, through July 30, 2013, as well as her medical bills. OTC had contemporaneous knowledge that these payments were being made in part for the 2004 carpal tunnel injury. On December 14, 2012, OTC/Travelers filed a first report of injury on the 2004 date of injury.

[¶4] In 2015, OTC/Sentry filed a Petition for Award seeking to establish the May 18, 2004, date of injury, and seeking a contribution from OTC/Travelers for indemnity benefits paid to Ms. Bickmore. Thereafter, Ms. Bickmore filed a Petition for Award, seeking to formally establish the 2012 date of injury against OTC/Sentry.[1] OTC/Travelers contended that the claim against it was barred by the statute of limitations, 39-A M.R.S.A. § 306.

[¶5] Section 306 was amended by the 125th Legislature. P.L. 2011, ch. 647, § 18 (effective August 30, 2012). The ALJ determined that the 2012 amendment does not apply to the 2004 date of injury because to do so would be an impermissible retroactive application of the 2012 amendment. He further determined that OTC/Sentry's claim against OTC/Travelers was not barred by the

[1] The ALJ granted this petition, and it is not at issue in this appeal.

prior version of the statute of limitations, because pursuant to Law Court precedent, the statute did not begin to run on the 2004 date of injury until December 14, 2012, when OTC/Travelers filed a first report of injury with the board. That period was extended to six years beyond the date that OTC/Sentry made payments for medical care in 2012 and 2013 with OTC/Travelers' contemporaneous knowledge that the need for medical care was due, in part, to the 2004 injury.

[¶6] Additionally, based on Ms. Bickmore's surgeon's opinion, the ALJ attributed responsibility for her incapacity equally to each injury, and ordered OTC/Travelers to reimburse OTC/Sentry accordingly.

[¶7] OTC/Travelers brought this appeal, raising issues related to the application of the statute of limitations.

II. DISCUSSION

A. Issues Raised on Appeal

[¶8] OTC/Travelers contends the ALJ erred when determining (1) that the application of the 2012 amendment to the statute of limitations would constitute an impermissible retroactive application; and (2) that a non-event, the failure to file a non-required first report of injury, was an operative event considered significant by the Legislature when enacting the 2012 amendment. OTC/Travelers asserts that instead, the operative event for determining which version of the statute applies

was the date Ms. Bickmore first lost time from work, triggering its obligation to file a first report of injury, or the date the petitions were filed, both of which occurred after the effective date of the amendment. This would render the application of the 2012 amendment prospective rather than retroactive, and therefore permissible. OTC/Travelers contends that the 2012 amendment, if applied, would bar all claims related to the 2004 date of injury.[2]

B. Statute of Limitations

[¶9] The ALJ construed the 2012 amendment "to toll the two year statute of limitations when an employer fails to file a first report of injury only if a first report of injury was required to be filed[.]" Before we determine whether it was error to apply the pre-2012 version of section 306(1), and to evaluate the underlying legal questions regarding retroactive or prospective application of the amendment, we must evaluate whether the ALJ erred in construing the statute in this manner.

[2] OTC/Travelers argues in the alternative that Law Court precedents have misconstrued the statute of limitations. Because we conclude that the ALJ erred when determining that the application of the 2012 amendment would be retroactive, we do not reach that issue.

OTC/Sentry argues that the ALJ's analysis is correct, and, alternatively, that the substance of the amendment itself does not change the outcome in this case regardless of whether it is applied prospectively or retrospectively. Based on our construction of the statute, the alternative argument has no merit.

Ms. Bickmore contends that the determination regarding the operative event is a factual finding not subject to appeal. Because this requires an assessment as to the Legislature's intent with respect to which events were intended to be governed by the amendment, we disagree with this assertion.

[¶10] When construing provisions of the Workers' Compensation Act:

> "[O]ur purpose is to give effect to the Legislature's intent." *Hanson v. S.D. Warren Co.*, 2010 ME 51, ¶ 12, 997 A.2d 730. "In so doing, we first look to the plain meaning of the statutory language, and construe that language to avoid absurd, illogical, or inconsistent results." *Id.* We also consider "the whole statutory scheme of which the section at issue forms a part so that a harmonious result, presumably the intent of the Legislature, may be achieved." *Davis v. Scott Paper Co.*, 507 A.2d 581, 583 (Me. 1986). "If the statutory language is ambiguous, we then look beyond the plain meaning and consider other indicia of legislative intent, including legislative history." *Damon v. S.D. Warren Co.*, 2010 ME 24, ¶ 10, 990 A.2d 1028. "Statutory language is ambiguous if it is reasonably susceptible of different interpretations." *Id.*

Graves v. Brockway-Smith Co., 2012 ME 128, ¶ 9, 55 A.3d 456.

[¶11] The statute of limitations applicable to workers' compensation claims, found in 39-A M.R.S.A. § 306(1), was amended effective August 30, 2012, as follows, with additions underlined and deletions crossed out:

> **1. Statute of limitations.** Except as provided in this section, a petition brought under this Act is barred unless filed within 2 years after the date of injury or the date the employee's employer files a required first report of injury ~~as~~ if required in section 303, whichever is later.[3, 4]

[3] Title 39-A M.R.S.A. § 303 (Supp. 2017) provides, in relevant part:

> When any employee has reported to an employer under this Act any injury arising out of and in the course of the employee's employment that has caused the employee to lose a day's work, or when the employer has knowledge of any such injury, the employer shall report the injury to the board within 7 days after the employer receives notice or has knowledge of the injury.

[4] Section 306(2) was not amended, but is relevant to our inquiry. It provides:

> **2. Payment of benefits.** If an employer or insurer pays benefits under this Act, with or without prejudice, within the period provided in subsection 1, the period during

[¶12] In *Wilson v. Bath Iron* Works, 2008 ME 47, ¶ 15, 942 A.2d 1237, the Law Court interpreted the pre-2012 version of section 306(1) as containing two alternative periods of limitations wholly independent of each other: one that commences on the date of injury and a second that commences on the date the employer files a first report. The Court stated:

> The meaning of section 306(1) is clear in its current form: the statute of limitations expires two years after the date of injury *or* two years after the date the employer files the first report of injury, *whichever is later*. There is nothing in the statute to indicate that the limitations period should be extended by the filing of a first report of injury only when the employer has a duty to file such a first report during the two-year period following the date of injury.

Id.

[¶13] In *Graves*, 2012 ME 128, ¶ 18, 55 A.3d 456, also construing the prior version of the statute, the Court held that the two-year period does not begin to run until the filing of the first report—required or not—even if the employer has paid benefits that would otherwise trigger the running of the six-year period in section 306(2).

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which an employee or other interested party must file a petition is 6 years from the date of the most recent payment.

A. The provision of medical care for an injury or illness by or under the supervision of a health care provider employed by, or under contract with, the employer is a payment of benefits with respect to that injury or illness if:

(1) Care was provided for that injury or illness on 6 or more occasions in the 12-month period after the initial treatment; and

(2) The employer or the health care provider knew or should have known that the injury or illness was work-related.

For the purposes of this paragraph, "health care provider" has the same meaning as provided in rules of the board.

[¶14] No case addressing the meaning of the 2012 Amendment has reached the Law Court. It is apparent, however, that the 2012 amendment changed the language of section 306(1) very little. The Legislature added the word "required" when the pre-2012 language already contained the "required" criterion, and changed "as required" to "if required." The "whichever is later" language relied on by the Court in *Wilson* remains in the statute.

[¶15] Like the prior version, the amended subsection appears to continue to include two, independent limitations periods. The statute of limitations expires (1) two years after the date of injury, or (2) two years after the date the employer files "a required first report if required in section 303," whichever is later.[5] OTC/Travelers contends that the Legislature, in response to the *Wilson* decision, intended to narrow the period to two years after the date of injury, or two years after the date the first report was filed, if required during the initial two-year period. OTC/Sentry argues that the Legislative history does not indicate that the Legislature intended to narrow the limitations period in response to *Wilson.*

[5] Prior to this decision, it remained unclear whether, under either provision, the limitations period would be triggered by filing a first report that was not required by section 303. Although in *Graves*, the Law Court suggests an employer can file a first report at any time, it is unclear whether a filing not required by section 303 would have triggered the statute of limitations. Moreover, as the Law Court noted in *Wilson* and *Graves*, the importance of filing a first report is that it prompts the board to notify injured workers of their rights. However, the board's duty to notify employees of their rights is only triggered under section 304. Section 304(1) provides: "Immediately upon receipt of the employer's report of injury *required by section 303*, the board shall contact the employee and provide information explaining the compensation system and the employee's rights. The board shall advise the employee how to contact the board for further assistance and shall provide that assistance." 39-A M.R.S.A. § 304 (2001) (emphasis added).

[¶16] Because the import of the statutory change is not clear from the plain language, and the amended statute remains susceptible to more than one meaning, we conclude that the statute is ambiguous, and we proceed to consider the legislative history of the 2012 modification.

1. L.D. 1571

[¶17] In May of 2011, during the first regular session of the 125th Legislature, L.D. 1571, "An Act to Review and Restructure the Workers' Compensation System," was introduced and referred to the Joint Standing Committee on Labor, Commerce, Research, and Economic Development (LCRED Committee). The bill touched on several provisions of the Act. It included an amendment to section 306, and contained proposed language identical to what was ultimately enacted. The summary of the bill associated with the amended statute of limitations provision read:

> It amends the statute of limitations periods when no first report of injury is required to be filed.

L.D. 1571, Summary (125th Legis. 2011).

[¶18] The LCRED Committee asked that the bill be carried over until the second regular session to allow the convening of a stakeholders' group to review the draft legislation and report its recommendations. LCRED Committee, Docket Entry (May 13, 2011) (approved June 3, 2011, and extended by request January 13,

2012)).[6] On February 6, 2012, the Executive Director of the Workers' Compensation Board issued a report on behalf of the stakeholders' group to the LCRED Committee in which he enumerated the group's recommendations to L.D. 1571. The report did not request any changes to the proposed amendments to the statute of limitations beyond those contained in L.D. 1571. The discussion portion of the report, pertaining to the statute of limitations, read as follows:

> Our Law Court several years ago rendered a decision in the matter of Wilson v. BIW, 2008 ME 47, 942 A.2d 1237 (Me. 2008). This decision has caused a significant amount of unrest in the business and insurer community because it holds the statute of limitations does not begin to run until a required first report of injury is filed. In many instances, employees sustain injuries but do not pursue lost time claims. There is no obligation to file a first report unless there is lost time. Wilson has opened the door for cases where injuries happened multiple years ago (in some cases more than 20 years ago) [to be] prosecuted. The proposed amendment would eliminate these very old cases. It creates a statute of limitations that is two years from the time a first report should be filed, or in a case where no first report is required, two years from the date of injury, whichever is later. This amendment to the statute of limitations is reasonable, makes good sense, and should be adopted.

Stakeholders' Report at 7 (emphasis in original).

[¶19] The LCRED Committee held a public hearing later in February 2012, during which a great deal of testimony was offered regarding many aspects of the bill, mainly regarding proposed changes to incapacity benefits. Very little

[6] *See also* An Act to Review and Restructure the Workers' Compensation System: Hearing on L.D. 1571 before the Committee Joint Standing Committee on Labor, Commerce, Research and Economic Development, *Stakeholders' Report to the 125th Legislature on L.D. 1571* (February 6, 2012) (Paul Sighinolfi, Executive Director, Workers' Compensation Board).

testimony was devoted to the proposed statute of limitations modification. The most extensive submission on the statute of limitations was offered on behalf of the Workers' Compensation Coordinating Council and the Maine Council of Self-Insurers and ("WCCC and Council of Self-Insurers"). It summarized that group's view on the effect of the amendment as follows:

> Under the proposal, the tolling provision applies only if the employer was required to file a first report of injury and failed to do so. This rule, in effect for several years before the *Wilson* decision, continues to make sense.

Hearing on L.D. 1571 before the LCRED Committee (written testimony of Kevin Gillis on behalf of the WCCC and the Council of Self-Insurers at 13 (February 17, 2012)).

[¶20] According to these groups, the proposed language was intended to return the law to the interpretation as commonly understood before section 306 was amended in 1999, when the "whichever is later" language, found to be significant by the Court in *Wilson*, was added. *Id.*; *see* P.L. 1999, ch. 354, § 6 (effective Sept. 18, 1999).

[¶21] Representatives of labor emphasized the importance of injured workers receiving notice of their rights upon the filing of a first report and predicting that the change would lead to increased litigation**.** *See, e.g.,* Hearing on L.D. 1571 before LCRED Committee, *An Analysis of Proposed Workers' Compensation Legislation and Current Maine Workers' Compensation Law*

(report of the AFL-CIO, submitted Feb. 17, 2012); *see also*, *e.g.*, Statement of James L. Case at 20 (submitted Feb, 17, 2012).

2. L.D. 1913 and Senate Amendment "D"

[¶22] The LCRED Committee, after the public hearing and several work sessions, abandoned L.D. 1571 and instead, pursuant to House Order, reported out a committee bill, L.D. 1913, in early April 2012. *Joint Order* H.P. 1345 (April 12, 2012). When introduced by Senator Rector, the LCRED Committee chair, he indicated that the new L.D.1913 was based on the work done by the stakeholders' group. Legis. Rec. S-2252 (2d Reg. Session 2012). Notably, however, the committee altered the proposed changes to the statute of limitations substantially:

> **1. Statute of limitations.** Except as provided in this section, a petition brought under this Act is barred unless filed within 2 years after the date of injury ~~or the date the employee's employer files a first report of injury as required in section 303, whichever is later~~.

L.D. 1913 (125th Legis. 2011).

[¶23] There was no discussion of the statute of limitations on the floor until House Amendment "A" was presented.[7] House Amend. A to L.D. 1913, No. H-941 (125th Legis. 2011). After debate on the Senate floor, it became apparent that the version of the statute of limitations in L.D. 1913 would reduce the limitations period significantly, and perhaps in unintended ways. *See* Testimony of Senator

[7] House Amendment "A" ultimately was adopted by the Legislature, but did not involve any changes to the statute of limitations provisions from the original bill.

Patrick, Legis. Rec. S-2253 (2d Reg. Sess. 2012). Senator Rector indicated that "there will be an amendment coming." *Id.* at 2254.

[¶24] The written legislative request for a floor amendment to the statute of limitations provision that ultimately was included in Senate Amendment "D" and introduced by Senator Rector, provides, "There is what I have to believe is a significant drafting error in L.D. 1913 pertaining to the statute of limitations language/Marie Wilson case issue.… Can we see to it that this piece is fixed to return to what the committee voted on." *Work paper/drafting instructions for Senate Amendment D to L.R. 2787(10)* (L.D. 1913). The work paper also summarizes the perceived problem with L.D. 1913 as it came out of committee in two paragraphs. First:

> This is far different and far beyond what the committee discussed in the context of "fixing" the Wilson case. This for the first time imposes a 2 year statute of limitations on employees, even when the employer has failed to meet the obligation to file a first report of injury even when the first report is clearly required by law.

Id. The second discussion of the problem includes suggested language for the floor amendment that mirrors the language before it was amended by the Committee. In addition, it states:

> The difference between these two [the provision in the un-amended version of L.D. 1913 as opposed to the provision proposed to the committee] is immense. An employer is required to file a first report of injury when an injury is severe enough so that it results in a lost day of work, commonly referred to as a lost time injury. When that first report of injury is filed with the Workers' Compensation

> Board, the Workers' Compensation Board sends out a letter to the injured worker notifying him or her of that there is a two-year limit to bring the claim. If the employer does not file that first report of injury, and was required to do so, the version of the bill that you voted on states that the two-year clock does not start to run. This makes sense because the Workers' Compensation Board has not been notified of the injury, and the worker[] has not been notified of the time limit to file a claim. Under the language in the printed bill, the time limit is two years even if the employer does not file the required First Report of Injury with the Workers' Compensation Board[,] which is drastically different. The reason why they wanted to amend the bill[] is because under current law, the two years does not begin to run even if the employer is not *required* to file a first report. *Id.* (Emphasis in original).

[¶25] The text of Senator Rector's amendment to the statute of limitations provision in L.D. 1913 reverted to the original language in L.D. 1571, and was ultimately adopted. Sen. Amend. D to L.D. 1913, No. S-564 (125th Legis. 2011). The summary associated with that change states, "[T]his amendment specifies that the statute of limitations bars a petition, unless filed within 2 years after the date of injury or the date the employee's employer files a required first report of injury." Sen. Amend. D to L.D. 1913, No. S-564, Summary**.**

[¶26] In informing the body as to the contents of his amendment as it pertained to the statute of limitations, Senator Rector testified "[T]his amendment specifies that the statute of limitations that bars a petition, unless filed within two years after the date of injury or the date that the employer files the first report of injury, and makes that change." Legis. Rec. S-2260 (2d Reg. Sess. 2012).

[¶27] L.D. 1913 was ultimately enacted with Senate Amendment "D." P.L. 2011, ch. 647.

3. Conclusion Regarding Construction of the 2012 Amendment

[¶28] OCT/Sentry argues that while the intent of some of the participants is clear from the testimony before the LCRED committee, it is not clear what the Legislature itself intended. The Legislature did not specify in any of its many summaries that it intended to alter the Court's holding in *Wilson*, and the floor debate is inconsistent, making the Legislature's intent unclear.

[¶29] We are persuaded from our review, however, and in particular by the work paper provided in support of the legislative request for a floor amendment to L.D. 1913, which led to Senate Amendment "D," as well as the Stakeholder's Report presented by Executive Director Sighinolfi and other significant pieces of the legislative history cited above, that the bill was intended to address—and to limit—the Law Court's decision in *Wilson*.[8] Based on this history, and the statutory scheme of which the provision forms a part, including sections 303 and 304 of the Act, we conclude that the appropriate interpretation of section 306(1) as amended is: except as otherwise provided in section 306, a claim is barred two years after the date of injury or, if within that two year period the employee's

[8] The Legislature subsequently attempted to clarify its intent regarding the statute of limitations after *Wilson* and *Graves*, and the 2012 amendment, during the 127th Legislature, but no legislation resulted. *See* L.D. 1119 (127th Legis. 2015).

employer is obligated to file a first report under section 303 and fails to do so, two years from the date the employer files the first report. This comports with the significance of the amendment as noted by the Law Court in *Graves*:

> The Legislature has since amended section 306(1) again. It now provides that the two-year limitations period will be tolled by the failure to file a first report of injury only if the employer was required to file the report pursuant to section 303.

2012 ME 128, ¶ 15 n.8.[9]

[¶30] Accordingly, we conclude that the ALJ did not err when determining that the effect of the 2012 amendment was to toll the two-year statute of limitations when an employer fails to file a first report of injury that the employer was required to file. We proceed to determine whether the ALJ erred when determining that the 2012 amendment did not apply in this case.

C. Retroactive or Prospective Application of the 2012 Amendment

[¶31] The Law Court stated the principles applicable to retroactive or prospective application of statutes in *Norton v. C.P. Blouin, Inc.*:

> [T]he application of a procedural statute to pending matters is not a retroactive application. If the statute effects a substantive change, that is, if it determines the legal significance of operative events occurring prior to its effective date by impairing rights or creating liabilities, the statute will govern matters arising before its effective date only if legislative intent favoring such a retroactive application is clearly expressed or necessarily implied. If the Legislature intends for a statute to apply retroactively, however, the statute will be so applied

[9] The Law Court also stated in *Graves*: "The amendment does not have retroactive application and does not apply in this case." 2012 ME 128, ¶ 15 n.8. However, consistent with our discussion below, all operative events in *Graves* occurred before the effective date of the 2012 amendment. *Infra* ¶¶ 36-37.

> unless a specific provision of the state or federal constitution is demonstrated to prohibit such action by the Legislature.

511 A.2d 1056, 1060 n.5 (Me. 1986).

[¶32] The ALJ looked to *Norton* and concluded that applying the 2012 amendment here would change the legal significance of OTC/Travelers' actions by impairing rights or creating liabilities, and was therefore substantive rather than procedural. As noted above, the 2012 amendment would, in some cases, significantly decrease the tolling period from the prior version of the statute as interpreted by the Law Court in *Wilson* and *Graves.* Thus, the ALJ did not err in reaching this conclusion. *See Dobson v. Quinn Freight Lines, Inc.*, 415 A.2d 814, 816 (Me. 1980) (stating that statutory amendments that extend the statute of limitations are procedural in nature and may be applied retroactively; statutes that reduce the limitations period affect substantive rights and "unless the legislative intent to the contrary is clearly expressed or necessarily implied from the language used," may be applied prospectively only (quotation marks omitted)).

[¶33] Having closely examined the statutory language and legislative history, we also agree with the ALJ's conclusion that no legislative intent that the 2012 amendment be applied retroactively is necessarily expressed or implied. *See Graves,* 2012 ME 128, ¶ 15 n.8.

[¶34] The ALJ next addressed whether the application of the 2012 amendment in this case would nevertheless be a permissible prospective

application. "[T]he application of a statute remains prospective if it governs operative events that occurred after its effective date, even though the entire state of affairs includes events predating the statute's enactment." *Barnes v. Comm'r of the Dep't of Human Serv.*, 567 A.2d 1339, 1341 (Me. 1989) (quotation marks omitted); *see also Norton*, 511 A.2d at 1060 n.5. In determining the operative event in a particular case, we look to the events the Legislature intended to be significant. *Liberty Mut. Ins. Co.v. Superintendent of Ins.*, 1997 ME 22, ¶¶ 9, 13, 689 A.2d 600; *Barnes*, 567 A.2d at 1341; *see also Axelsen v. Interstate Brands Corp.*, Me. W.C.B. No. 15-27, ¶¶ 10-11 (App. Div. 2015).

[¶35] The ALJ determined that the operative event here was OTC/Travelers' "failure to file its first report of injury with the Board for the May 18, 2004 date of injury." Because this failure took place before the effective date of the 2012 amendment, the ALJ concluded that application of the 2012 amendment would be retroactive.

[¶36] We disagree with this conclusion. Neither the un-amended nor the amended version of section 306 mentions an employer's "failure to file" a first report of injury. Rather, both versions refer to the date the employee's employer *files* a first report of injury. In fact, neither *Wilson* nor *Graves* involved a failure to file a first report. First reports were timely filed under section 303 in both cases. In

both cases, however, the duty to file did not arise until after the two and six year periods had expired, respectively.

[¶37] We conclude that the operative events considered significant by the Legislature when enacting the 2012 amendment are (1) the date the obligation to file a required first report of injury under section 303 arises ; and (2) the date the employer files a first report as required by section 303. In this case, both the obligation to file a first report and the actual filing of the first report occurred after the effective date of the 2012 amendment.

[¶38] Thus, although we agree with the ALJ that the amendment was substantive in nature, and that there is no indication that the Legislature intended it to apply retroactively, under the circumstances of this case, the application of the 2012 amendment is prospective. As such, it applies to Ms. Bickmore's case. Therefore, because OTC/Sentry's claim related to the 2004 date of injury was asserted more than six years after OTC/Travelers made its last payment, and no first report of injury was required to be filed within that six-year period, it is barred by the statute of limitations.

III. CONCLUSION

[¶39] Pursuant to the 2012 amendment, OTC/Sentry's claim, asserted in 2015, is barred because the six-year statute under section 306(2), triggered by

OTC/Travelers's last payment in December of 2004, expired in December of 2010.

No first report of injury was required to be filed before the six-year period expired.

The entry is:

> The administrative law judge's decision is vacated insofar as it requires OTC/Travelers to reimburse OTC/Sentry for any portion of the benefits paid to Ms. Bickmore.

Any party in interest may request an appeal to the Maine Law Court by filing a copy of this decision with the clerk of the Law Court within twenty days of receipt of this decision and by filing a petition seeking appellate review within twenty days thereafter. 39-A M.R.S.A. § 322 (Supp. 2017).

Pursuant to board Rule, chapter 12, § 19, all evidence and transcripts in this matter may be destroyed by the board 60 days after the expiration of the time for appeal set forth in 39-A M.R.S.A. § 322 unless (1) the board receives written notification that one or both parties wish to have their exhibits returned to them, or (2) a petition for appellate review is filed with the law court. Evidence and transcripts in cases that are appealed to the law court may be destroyed 60 days after the law court denies appellate review or issues an opinion.

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