

**To: New Jersey Law Revision Commission**  
**From: Samuel M. Silver**  
**Re: Statute of Limitations for Medical Providers in Workers' Compensation Cases**  
**(*Plastic Surgery Center, PA, v. Malouf Chevrolet-Cadillac, Inc.*)**  
**Date: March 09, 2020**

## MEMORANDUM

### Executive Summary

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

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

### Statute

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

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

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<sup>1</sup> N.J.S. 34:15-15.

<sup>2</sup> N.J.S. 34:15-51.

<sup>3</sup> N.J.S. 2A:14-1.

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

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

### **Background**

Historically, a medical provider was entitled to file a collection action for payment of its services in the Superior Court and had no obligation to participate in the patient's pending compensation action.<sup>5</sup> A lawsuit brought by a medical provider against a patient is generally predicated upon an express or implied contractual arrangement.<sup>6</sup> Such actions are therefore governed by the statute of limitations set forth in N.J.S. 2A:14-1. This statute provides that "[e]very action at law for...recovery upon a contractual claim or liability, express or implied... shall be commenced within 6 years next after the cause of such action shall have accrued."<sup>7</sup>

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

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

In *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*, a number of medical providers filed petitions for the payment of services rendered to the employees of each employer.<sup>8</sup> The petitions, filed by these providers, were all filed more than two years from the date of each employee accident but less than six years from the claim's accrual.<sup>9</sup>

The compensation judge interpreted the statute of limitations set forth in the Worker's Compensation statute, N.J.S. 34:15-51, to require "every claimant," including medical providers,

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<sup>5</sup> *Id.* at \*1.

<sup>6</sup> *Id.*

<sup>7</sup> N.J.S. 2A:14-1.

<sup>8</sup> *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*, 2019 WL 256698 \*1 (App. Div. 2019). The five cases on appeal each set forth a common issue. The Appellate Division consolidated these appeals for purposes of addressing the statute of limitations issue. In addition, and in the interest of judicial economy, the specific facts of each case were omitted by the Appellate Division and the overview set forth herein is modeled upon the statement of facts and procedural history fashioned by the appellate panel.

<sup>9</sup> *Id.*

to file a petition with the Division within two-years from the date of the accident.<sup>10</sup> Based upon this reading of the statute, each of the actions by the medical providers was determined to be filed beyond the statute of limitations and therefore dismissed.<sup>11</sup> Alleging that the compensation judge misconstrued the statute, each of the medical providers appealed the dismissal of their cases.<sup>12</sup>

### Analysis

The New Jersey Appellate Division was asked to determine whether, “through its silence, the Legislature intended... to apply the two-year statute of limitations... contained in the Workers’ Compensation Act [to medical claims]... or whether the Legislature intended to leave things as they were and continue to apply the six-year statute of limitations for suits on contracts.”<sup>13</sup> In the absence of legislative clarity, the Court based its decision upon its interpretation of the workers’ compensation statute.<sup>14</sup>

The Court acknowledged that the Division has exclusive jurisdiction over all disputed medical-provider claims arising from any claim for compensation for a work related injury.<sup>15</sup> The Court was, however, persuaded that the six-year statute of limitations applied to these types of claims because the “Legislature did not simply express that the Act’s two-year time bar would apply to medical-provider claims.”<sup>16</sup> The Court expressly rejected the claim that, pursuant to N.J.S. 34:15-51, “every claimant for compensation” is governed by the Act’s two-year statute of limitations.

A draft version of the bill that amended N.J.S. 34:15-15 would have imposed a duty upon the Division “to provide procedures to resolve [...] disputes, including a system of binding arbitration and procedural requirements for medical providers or any other party to the dispute.”<sup>17</sup> It was the opinion of the compensation judge that the omission of this language from the final version of the legislation confirmed the Legislature’s belief that medical-provider claims were subject to the statute of limitations found in N.J.S. 34:15-51.<sup>18</sup> Explicitly rejecting the compensation judge’s reasoning, the Appellate Division opined that, “[i]f anything, the belief that the Legislature was already satisfied with existing procedural requirements for these claims more logically suggests it intended that the six-year statute of limitations, which undoubtedly applied to medical-provider claims prior to the amendment, would continue to apply after the amendment was enacted.”<sup>19</sup>

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at \*2-\*3.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at \*2.

<sup>17</sup> *Id.* at \*2, quoting Sponsor’s Statement to A2652 (May 10, 2012).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

The Appellate Division also found it to be compelling that “...the Legislature made no alteration to N.J.S. 34:15-51 when it amended N.J.S. 34:15-15.”<sup>20</sup> The Court reasoned that the word “claimant” in the phrase “*every claimant for compensation*,” as set forth in N.J.S. 34-15-51 denotes an “employee” and “compensation” denotes “that to which the employee is entitled for a work related injury...”<sup>21</sup> The Court did not accept that the phrase “every claimant” meant everyone with an action pending in the Division; or, that “compensation” meant remuneration for medical services that were provided to an injured worker. Rather, the Court examined these terms in the context of other statutes found in Chapter 15, and its own definitions in the context of the statute of limitations.

Unable to reconcile the “timing” for the filing of a medical claim with the language found in N.J.S. 34:15-51, the Court rejected the statute of limitations utilized in compensation actions.<sup>22</sup> The statute of limitations in workers’ compensation actions provides, in relevant part that,

“[e]very claimant for compensation ...shall ... submit to the Division of Workers’ Compensation a petition and verified complaint... within two years after the date on which the **accident occurred**...”<sup>23</sup>

The Appellate Division advanced two hypotheticals supporting its position regarding the statute of limitations in the workers’ compensation scheme for cases involving contested medical claims.<sup>24</sup> First, it posited that a medical provider may treat an individual for a period greater than the two-year following an injury.<sup>25</sup> Next, it proposed a situation in an individual does not receive treatment until two-years after work-related incident.<sup>26, 27</sup> In either conjectural situation, the “medical provider’s right to pursue a legitimate claim might actually be extinguished before it even accrued.”<sup>28</sup>

The Appellate Division noted, “...we find nothing but legislative silence on the point in controversy....”<sup>29</sup> Despite the absence of a definitive statement on this subject, the Court rejected the respondent’s arguments, reversed the judgments of the compensation court, and remanded each matter for further proceedings on what it termed “timely claims.”<sup>30</sup>

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<sup>20</sup> *Id.* at \*3.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> N.J.S. 34:15-51.

<sup>24</sup> *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*, 2019 WL 256698 at \*3.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> There is no indication that either of these hypotheticals is based upon the facts of any one of the five underlying actions consolidated, and reviewed, by the Court as part of this appeal. The absence of any such facts lends credence to the notion that the two scenarios posted by the panel are purely hypothetical and for illustrative purposes only.

<sup>28</sup> *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*, 2019 WL 256698 at \*3.

<sup>29</sup> *Id.* at \*4.

<sup>30</sup> *Id.*

## Subsequent History

The employers' petitions for certification were granted by the New Jersey Supreme Court on May 14, 2019.<sup>31</sup> The Court affirmed the judgment of the Appellate Division for the reasons expressed below.<sup>32</sup> In doing so, the Court noted that in, "the 2012 amendment to N.J.S.[ ] 34:15-15, the Legislature did not expressly address the statute of limitations" adding that "[t]he Legislature is, of course, free to do so in the future."<sup>33</sup>

## Conclusion

Staff seeks authorization to conduct additional research and outreach to ascertain whether it would be appropriate to modify the statute to clarify the statute of limitations in the workers' compensation statutes as it applies to disputed medical claims.

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

<sup>32</sup> *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*, 2020 WL 521659 \*1 (Feb. 03, 2020).

<sup>33</sup> *Id.*