

Bugbee & Conkle, LLP

Workers' Compensation News

June 2, 2008

Volume 08, No. 3



405 Madison Ave., Ste. 1300
Toledo, Ohio 43604
(419) 244-6788

www.Bugbee-Conkle.com

John F. Wetli
Gregory B. Denny
Tybo Alan Wilhelms
Robert L. Solt, III
Robert P. King
Mark S. Barnes
Harvey C. Miller
Andrew J. Wilhelms
Janelle M. Matuszak

INJURY STATUTE OF LIMITATIONS APPLIES TO WEAR AND TEAR CLAIMS

On April 14, 2008, the Third Appellate District Court of Appeals held that the statute of limitations in R.C. 4123.84 applied to wear and tear injury claims.

In *Brink v. Olson Cold Storage, Ltd.*, 2008-Ohio-1788, the claimant filed his workers' compensation claim more than two years after the period of time during which the claimant alleged he was injured. After the Industrial Commission had denied the claim, finding it was time barred under R.C. 4123.85 (the occupational disease statute of limitations), the claimant appealed to the trial court. The employer, represented by **Bugbee & Conkle**, successfully convinced the trial

court to summarily dispose of the case because the claim was untimely under R.C. 4123.84. The claimant argued because wear and tear injuries are akin to non-scheduled occupational diseases, the occupational disease statute of limitations in R.C. 4123.85 should apply.

The court of appeals rejected the claimant's argument reasoning that by its plain language R.C. 4123.84 applies to all injury claims, including wear and tear injuries. This decision should prove helpful to defending untimely wear and tear injury claims.

* The full text of the cases cited in this publication can be viewed by clicking the case name.

EMPLOYERS ENTITLED TO SET OFF WITHHOLDING TAXES IN WAGE REPLACEMENT PROGRAMS

In *State ex rel. General Motors Corp. v. Indus. Comm.*, 117 Ohio St.3d 480, 2008-Ohio-1593, the Ohio Supreme Court held that self-insured employers which pay claimants the difference between gross wages and TTD compensation, are not required to reimburse claimants for the taxes withheld from wages.

In this case, the claimant had a period of disability due to an allowed herniated disc. The employer paid the claimant \$7,091.30 gross wages

through its wage replacement program. After investigation of the claim, the employer determined the claimant was entitled to \$9,119.71 in TTD compensation and paid the claimant the difference between the TTD rate and the gross wages previously paid.

The claimant demanded the payment of the taxes withheld from his gross wages. The Court found that R.C. 4123.56(A) does not limit an employer's setoff to the net amount the claimant actually receives.

The information contained in this publication is not intended to serve as legal advice, but merely to alert readers to developments in the law. If you have any questions, either call at the address listed above left or email us through our website. The website can be accessed by clicking the link below.

www.Bugbee-Conkle.com