



## Alerts

### Missouri Court Holds That State's Workers' Compensation Law Not Exclusive Remedy for Occupational Diseases

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*Toxic Tort Alert*

The Missouri Court of Appeals, Western District, has held that the Missouri Workers' Compensation Law (WCL) does not provide the exclusive remedy for plaintiffs seeking redress for occupational diseases. *State ex rel. KCP&L Greater Missouri Operations Co. v. The Honorable Jacqueline Cook, Circuit Court Judge, 17th Circuit Court, WD73462 (Mo. Ct. App. Sept. 13, 2011)*. Historically, the WCL was the exclusive remedy for all work-related injuries. The Court of Appeals' decision allows plaintiffs to sue for occupational disease either under the WCL or by pursuing common law causes of action.

In the underlying case, plaintiff, an employee suffering from mesothelioma, sued defendant, his former employer, on negligence and premises liability theories. The former employer moved for summary judgment arguing that the former employee's exclusive remedy was found in the WCL. The trial court denied the motion and held that the former employee had a right to proceed at common law. The former employer filed a writ for an order of prohibition to overturn the trial court's ruling.

In ruling on the writ, the appellate court examined the changes that the Missouri legislature had made to the WCL in 2005. The WCL is the only and exclusive remedy for an employee who experiences "personal injury or death caused by accident" in the workplace. Thus, employers may only be sued under the WCL, and not at common law, for work-related accidents. The 2005 version of the law, however, defines "accident" very narrowly as an "unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift." The appellate court reasoned that an injury arising from an occupational disease is not an accident because it is not caused by a specific event during a single work shift. Because such a disease is not a workplace "accident," the WCL does not provide the exclusive remedy. Although this seems to be a somewhat close reading of the definitions in the WCL, the court noted that the 2005 revisions to the law required reviewing courts to apply "strict construction" to its terms. In fact, according to the court, even defense counsel allowed that occupational diseases do not fall under the definition of "accident" as it is defined in the WCL. Thus, the court held an occupational disease not to be an accident and therefore not subject to the WCL's exclusivity provisions.

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The court cited *Missouri Alliance for Retired Americans (MARA) v. Department of Labor & Industrial Relations*, 277S.W.3d 670 (Mo. banc Feb. 24, 2009) where the Missouri Supreme Court indicated that where an injury is one that is not included in the definition of “accident,” it is not subject to the WCL’s exclusivity provisions. The MARA Court concluded that “workers excluded from the act by the narrower definitions of ‘accident’ and ‘injury’ have a right to bring suit under common law, just as they could and did prior to the initial adoption of the act, because they no longer fall within the exclusivity provision.” The appellate court in *State ex rel. KCP&L* reasoned that it was bound to follow this precedent.

The Court of Appeals also noted that the 2005 changes modified the standards for compensability of occupational disease claims under the WCL so that an occupational disease is compensable under the law if it is “the prevailing factor in causing the medical condition and the disability.” The court concluded that an occupational disease is thus compensable under the WCL in some instances, but that the compensability of an injury and the exclusivity of a remedy are separate questions. In other words, just because a disease is compensable under the WCL does not mean that it is *only* compensable under the law. The court reasoned that all it needed to decide for this case was whether the former employee could pursue the common law remedy.

The dissent argued that liability and exclusivity go hand-in-hand and that the majority’s decoupling of the two went against the legislative intent behind the WCL. The dissent looked to prior case law wherein the court had read “occupational disease” into “accident” and argued that the legislature had amended the WCL with knowledge of these judicial interpretations and found that no change was necessary to reflect a different intent. The dissent reviewed the long history of the WCL being used to strike a “bargain” between employers and employees by eliminating proof of negligence and making a lawsuit in the Missouri Division of Workers’ Compensation the exclusive remedy for work injury. Based on this history, the court felt that separating any liability under the WCL from the exclusivity provision was plainly not the legislature’s intent.

As a result of the court’s historic departure from the traditional understanding of workers’ compensation laws, a person who develops an occupational illness allegedly related to exposure to toxicity in the workplace will now have the option to sue the former employer either through the Division of Workers’ Compensation or to pursue common law remedies in the state trial court.

For more information, please contact [Craig T. Liljestrand](#) or your regular [Hinshaw attorney](#).

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