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IN THE  
COURT OF APPEALS OF MARYLAND

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September Term, 2003  
No. 81

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ARNOLD C. YOX,

Petitioner

v.

THE TRU-ROL COMPANY, INC., et al.,

Respondents

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On Appeal from the Circuit Court for Baltimore County, Maryland  
(Kathleen G. Cox, Judge)  
Pursuant to a Writ of Certiorari to the Court of Special Appeals

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**BRIEF OF AMICI CURIAE BALTIMORE CITY, BALTIMORE COUNTY,  
MONTGOMERY COUNTY, AND PRINCE GEORGE'S COUNTY, MARYLAND**

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## QUESTION PRESENTED

**Did the legislature intend to create an unlimited period of time within which to file hearing loss claims under the workers' compensation law, or does the statute of limitations for hearing loss run from disablement as defined by the Court of Special Appeals in *Crawley v. General Motors Corporation*, 70 Md. App. 100 (1987)?**

## ARGUMENT

While the goal of the workers' compensation law is to compensate employees who experience injuries when performing their jobs, this Court should not read the law to allow an employee to delay seeking those benefits. Doing so creates an imbalance in the statutory scheme for providing compensation to injured workers. To eliminate this imbalance, the Workers' Compensation Act imposes a statute of limitations on filing claims. For occupational diseases, a claim must be filed at the later of disablement from the occupational disease or when the employee has actual knowledge of a correlation between the hearing loss and his employment. Md. Code Ann., Lab. & Empl. § 9-711 (2001).

More than 15 years ago, the Court of Special Appeals chose to interpret disablement for hearing loss in terms of compensability. In *Crawley v. General Motors Corporation*, 70 Md. App. 100, 519 A.2d 1348, *cert. denied*, 310 Md. 147, 528 A.2d 473 (1987), the court determined that a claim for hearing loss is compensable without regard to the traditional definition of disablement. Instead of examining whether the claimant is unable to work or has lost any wages, disablement for hearing loss cases was redefined in terms of meeting the mathematical criteria for measuring an occupational hearing loss. 70 Md. App. at 107, 519 A.2d at 1352. To find that a claim is compensable without a disablement but that the

compensability does not trigger the statute of limitations is counter-intuitive—it eliminates the existence of a statute of limitations for hearing loss claims, while denying long-recognized purposes behind the use of statutes of limitation.

**The statute of limitations for hearing loss runs from disablement as defined by *Crawley v. General Motors Corporation*, 70 Md. App. 100 (1987), and not from disablement as defined in Lab. & Empl. § 9-502.**

This Court interprets a statute based on the plain meaning of the language and in a manner that will promote the legislative intent. *Armstead v. State*, 342 Md. 38, 56, 673 A.2d 221, 229 (1996). Illogical or unreasonable constructions of a statute should be avoided. *Frost v. State*, 336 Md. 125, 137, 647 A.2d 106, 112 (1994). In no event may a court add words to the statute or otherwise distort its clear meaning. *Blind Industries v. Department of General Services*, 371 Md. 221, 231, 808 A.2d 782, 788 (2002).

The workers' compensation law contains two provisions that must be read together to determine when a claim for hearing loss must be filed. For occupational diseases, the law creates a statute of limitations that requires an employee to file a claim with two years after the date: "of disablement or death" or "when the covered employee . . . first had actual knowledge that the disablement was caused by the employment." Md. Code Ann., Lab. & Empl. § 9-711 (2001). In a separate provision, the statute sets the point of compensability for hearing loss with no reference to disablement:

[An] employer shall provide compensation in accordance with this title to a covered employee for loss of hearing by the covered employee due to industrial noise in the frequencies of 500, 1,000, 2,000, and 3,000 hertz.

*Id.* at § 9-505. In other words, an employee need not lose time from work to be compensated for hearing loss. The law includes the level of loss needed at these frequencies to be compensable under the Act. *Id.* at § 9-650. Reading these provisions together, an employee can file a claim two years from the later event of hearing loss or actual knowledge that the employment caused the hearing loss. *Helinski v. C&P Telephone Company*, 108 Md. App. 461, 473, 672 A.2d 155, 161, *cert. denied*, 342 Md. 582, 678 A.2d 1047 (1996). Knowledge of the connection between the employment and the hearing loss puts the employee on inquiry notice to determine whether the hearing loss is compensable.

The Court of Special Appeals had the opportunity to clarify when an employee becomes eligible for workers' compensation benefits due to hearing loss in *Crawley v. General Motors Corporation*, 70 Md. App. 100, 519 A.2d 1348, *cert. denied*, 310 Md. 147, 528 A.2d 473 (1987). The court recognized that the Legislature had revised the hearing loss provision "not only to provide technical criteria for measuring occupational loss of hearing but also to make such loss compensable without regard to the inability to work or loss of wages." 70 Md. App. at 107, 519 A.2d at 1352. The court's decision effectively changed the prior law, because disablement in the context of hearing loss claims no longer required incapacitation or lost time from work, but only required an employee to meet the threshold delineated in Lab. & Empl. § 9-505. 70 Md. App. at 107, 519 A.2d at 1352. To date, the Legislature has not responded to this construction of the statute, creating the inference that

the General Assembly intended to allow an employee to file a hearing loss claim without becoming so impaired that she could not work.<sup>1</sup>

This Court adheres to the statutory construction principle that seeks to ascertain the legislative intent, even when interpreting a remedial statute, which benefits from liberal construction. *See Prince George's County v. Maringo*, No. 1354, 2003 Md. App. LEXIS 86, at \*17 (June 30, 2003) (citations omitted). As the Court of Special Appeals explained in *Crawley*, the Legislature intended to eliminate the need for an employee to prove disablement as a prerequisite to making a claim for hearing loss under the workers' compensation law. 70 Md. App. at 107, 519 A.2d at 1352. The absence of any change in the law since that decision suggests that the Court of Special Appeals has interpreted the law in accordance with the Legislature's intent.

To interpret disablement one way for compensability and another way for statute of limitations purposes leads to an illogical result that should be avoided. *See Frost, supra*. As soon as an employee meets the standards of hearing loss set out in Lab. & Empl. § 9-650, the claim is compensable under the Workers' Compensation Act. *See Crawley*, 70 Md. App. at 107, 519 A.2d at 1352. Accordingly, if the traditional interpretation of disablement is adopted for hearing loss cases, an employee who experiences compensable hearing loss in

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<sup>1</sup>In further support of this inference, the dissenting opinion in *Crawley* emphasized the function of workers' compensation as providing lost wages. From this perspective, providing workers' compensation benefits to an employee who has not missed time at work amounts to additional wages. 70 Md. App. at 109-110, 519 A.2d at 1353. If the Legislature shared this concern, it would have amended the law.



1970, but this hearing loss does not prevent her from continuing to work for the next thirty years, the statute of limitations would never begin to run on the claim. As long as the employee has not been incapacitated from work, the employee would have over thirty years in which to initiate the claim. This circumstance would effectively eliminate the application of any statute of limitations to hearing loss claims.

***Applying a statute of limitations to occupational hearing loss claims  
enables employers to conduct meaningful investigations  
and permits prompt treatment of employees.***

Applying a two-year statute of limitations for hearing loss claims does not interfere with the remedial purpose of the law and encourages prompt claims. And even the doctrine of liberal construction ordinarily does not extend to modifying or eliminating statutes of limitation. *See Buskirk v. C.J. Langenfelder & Son, Inc.*, 136 Md. App. 261, 270-271, 764 A.2d 857, 862-863 (2001) (citations omitted). The acknowledged goals of a statute of limitations include promoting timely actions, suppressing stale or fraudulent claims, and avoiding the inconvenience that may stem from a delay in asserting one's rights. *Lumsden v. Design Tech Builders, Inc.*, 358 Md. 435, 442, 749 A.2d 796, 799-800 (2000); *Goldstein v. Potomac Electric Power Company*, 285 Md. 673, 684, 404 A.2d 1064, 1069 (1978). In the workers' compensation context, the statute of limitations serves the dual role of giving employees incentive to file claims as early as possible and enabling employers to defend claims before memories fade and witnesses become unavailable. Absent these constraints, an employer cannot adequately plan for the future, because its potential liability remains

uncertain. *American General Assurance Co. v. Pappano*, 374 Md. 339, 350, 822 A.2d 1212, 1219 (2003) (citing *Pierce v. Johns-Manville Sales Corp.*, 296 Md. 656, 665, 464 A.2d 1020, 1026 (1982)).

For hearing loss claims, it becomes even more important to encourage timely claims. An employee's hearing loss can derive from exposure to noise on and off the job, as well as the ordinary aging process. If an employee can delay filing a claim until incapacitation occurs, it may be impossible to distinguish between hearing loss that actually related to noise during the employment and other factors related to simple aging, health experiences, and non-work activities.<sup>2</sup> The passage of time leads to difficulty tracking medical records and memories may fade regarding what other exposure may have occurred at some past time.

To facilitate an employee's early knowledge of hearing loss in relation to certain susceptible positions, several counties conduct pre-employment tests of all public safety employees.<sup>3</sup> These preliminary tests enable the employer to determine the extent to which

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<sup>2</sup>Everyone experiences exposure over time to ordinary sounds that come from lawn mowers, power tools, or loud music. The longer the period of time, the less distinction there may be between hearing loss caused by machinery used at work and other noises experienced on a daily basis.

<sup>3</sup>Examples include Anne Arundel County (pre-employment hearing tests for police, fire, correctional, and deputy sheriff personnel); Calvert County (pre-employment hearing tests of all 911 center control personnel) Frederick County (pre-employment hearing tests for firefighters); Harford County (pre-employment audiological examinations of correctional deputies and law enforcement personnel); Howard County (pre-employment hearing tests for police, fire, and correctional personnel); Montgomery County (pre-employment hearing tests for firefighters, deputy sheriffs, police officers, and correctional officers); Prince George's County (pre-employment hearing tests for all fire, police, corrections, deputy sheriffs, and communications workers); Queen Anne's County (newly employed sheriff's

an employee's hearing later worsens during employment. Because the workers' compensation law imposes liability on the employer only for the change in the hearing loss during employment, this information becomes significant. *See* Lab. & Empl. § 9-651(b).

Enforcement of a statute of limitations will not impose a burdensome standard on employees who suffer hearing loss. Instead, requiring a claim to be filed within a certain period ensures prompt remedial action by the employees and facilitates providing proper awards. Not all occupational diseases result in a permanent inability to continue in employment, but may simply require payment of workers' compensation benefits based on the fact that the employment caused an injury.

The hearing loss encountered by police officers and firefighters provides a good example. Just because these employees may suffer hearing loss sufficient for compensation does not mean that they can no longer perform their duties. In recognition of this fact, the Legislature altered the hearing loss statute to obviate the need to show incapacitation. *See Crawley, supra*. By doing so, the General Assembly expressed its intent to make these employees eligible for a hearing aid, ear plugs, or permanent partial disability benefits under the workers' compensation law as these needs arise.

To promote this legislative intent, some local governments have implemented annual physical examinations that include hearing testing so that these employees will know each

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deputies receive a physical, during which the doctor checks hearing); St. Mary's County (pre-employment hearing tests of 911 communications specialists, deputies, and correctional officers); and Washington County (pre-employment hearing tests for 911 dispatchers).

year whether they have experienced hearing loss due to their employment and can inquire whether it has reached a compensable level. In Anne Arundel County, fire personnel who work on the hazardous materials units receive yearly hearing tests, and Frederick County conducts annual hearing tests of all firefighters. In Calvert County, the 911 Control Center personnel are tested on a biannual basis, while Harford County conducts annual audiometry tests of its correctional deputies and law enforcement personnel. Washington County tests its 911 dispatchers annually, and this year St. Mary's County started administering hearing tests to 911 communication specialists, deputies, and correctional officers and plans to do so annually.

These tests are administered by the municipalities to ensure the safety of the employees themselves, co-employees and the public at large. Public safety personnel engage in hazardous employment and their health is of paramount importance to the counties. In most programs, where employees tested have reduced hearing loss, medical treatment is offered. This treatment includes preventive and remedial care including hearing aids and ear plugs. If the hearing loss is serious, the frequency of testing increases. As a last resort, if the deterioration of the hearing is so great that performance problems result, the employee is referred for a fitness for duty examination. If the examination reveals that the employee can no longer carry out the duties of the job, then the employee will be retired based on the disability.

Montgomery County and Prince George's County have additional groups of testing. In Montgomery County, all firefighters receive annual hearing tests, regardless of age. Police, deputy sheriffs, and correctional officers in Montgomery County, receive tests every three years through age 29. Once the officers reach 30 years of age, they are tested every two years, and then annually after they reach the age of 40. In Prince George's County, the firefighters use the same testing schedule for hearing loss as the police in Montgomery County, with tests every three years through age 29, every two years from 30 to 39, and every year once they reach 40 years of age.

By requiring employees to seek workers' compensation benefits at the point where they know their hearing loss results from their employment or it has become compensable, the remedial purposes of the workers' compensation law are fulfilled. The employee may obtain appropriate benefits and the employer can ensure that the remedy is appropriate.

## **CONCLUSION**

The Court of Special Appeals properly construed the workers' compensation law to require an employee to file a prompt claim for hearing loss and that failure to do so causes the claim to be barred by the statute of limitations. This interpretation promotes the legislative intent of the law and encourages employees to remain vigilant about their personal health. To permit hearing loss claims at any time would become unmanageable and would weaken the connection between the employment duties and the employee's own aging process and other non-employment exposures. And it would impair the efforts of local

governments to provide prompt benefits to their employees by establishing regular testing of those employees who engage in jobs with significant noise exposure. This Court should affirm the interpretation given by the intermediate appellate court.

Respectfully submitted,

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Statement pursuant to Maryland Rule 8-504(a)(8): This brief was prepared with proportionally spaced type, using Times New Roman font and 13pt type size.