



## Supreme Court Upholds Georgia Statute of Limitation Defenses

On June 6, 2016, the Supreme Court of Georgia issued its Opinion in *Roseburg Forest Products Company v. Barnes*. The case involves a catastrophic amputation injury and a claimant's attempt to seek a recommencement of income benefits after two years following the payment of temporary total disability (TTD) benefits. To do so, the claimant argued the two-year statute of limitation under OCGA § 34-9-104 did not apply to his original catastrophic claim and he argued a new fictional injury claim when he was laid off from work approximately 16 years after his initial injury. While this case involved two separate insurer defendants, the successful defense to the fictional injury claim was handled by Swift Currie attorney Michael Rosetti.

### Change in Condition Claim

On August 13, 1993, the claimant sustained a partial amputation of his left leg below the knee. The claim was accepted as "catastrophic" and TTD benefits were paid until the claimant returned to work in 1994. Additional TTD benefits were not sought until August 30, 2012, when a hearing request seeking a recommencement was filed. The insurer in that case asserted the two-year statute of limitation defense based on O.C.G.A. § 34-9-104 (b). That provision requires a party seeking additional income benefits to file a claim within two years of the last payment of either TTD or TPD benefits. As 18 years had passed between the last payment of TTD benefits and the formal request for additional benefits, both the ALJ and State Board Appellate Division denied the claimant's request for recommencement. The Superior Court of Dooly County affirmed the State Board's denial.

The Court of Appeals of Georgia, however, reversed the denial below, holding that the legislature intended to exclude catastrophic injuries from the statute of limitation provisions of O.C.G.A. § 34-9-104 (b).

The Supreme Court of Georgia reversed the Court of Appeals, holding that regardless of whether the claimant could otherwise meet his burden of proof to establish he is entitled to a recommencement of TTD benefits, he must file a claim for benefits to actually enforce that right within two years.

### Fictional Injury Claim

The claimant also alleged a "fictional new accident" date of September 11, 2009, which was the day following the claimant's last day of work with Roseburg due to a layoff. The claim for benefits in that case was not filed until November 30, 2012.

O.C.G.A. § 34-9-82(a) states that "[t]he right to compensation shall be barred unless a claim therefore is filed within one year after injury, except that if . . . remedial treatment has been furnished by the employer on account of the injury the claim may be filed within one year after the date of the last remedial treatment furnished by the employer." The insurer for this injury date argued the statute of limitation provisions for new accident claims barred the claim since more than three years passed between the alleged fictional accident date and the date on which benefits were requested. In response, the claimant argued the tolling provision included in O.C.G.A. § 34-9-82 (a) applied in this case because remedial treatment was furnished two months after the alleged fictional injury date in 2009 and then again in December 2011 by the first insurer on account of the original injury. To this end, the claimant argued that it mattered not that the claim would have been time-barred one year after the remedial treatment was furnished in November 2009 because additional remedial treatment was furnished in December 2011 providing the claimant with additional time to file a claim until December 2012.

The ALJ and State Board Appellate Division rejected the claimant's arguments and denied the request to find a new fictional injury based on the one-year statute of limitation under O.C.G.A. § 34-9-82 and other grounds. The State Board's denial was affirmed by the Superior Court of Dooly County.

The Court of Appeals of Georgia, however, reversed the decision, endorsing the claimant's argument that so long as a claim was filed within one year of any remedial treatment, regardless of whether the statute had already run, the claim was timely filed.

The Supreme Court of Georgia reversed the Court of Appeals finding that, utilizing the remedial treatment furnished by "the employer" on November 13, 2009, the claimant would have until November 13, 2010, to file a timely claim. His failure to do so rendered the claim barred by the statute of limitation. The Supreme Court found the additional remedial treatment furnished in 2011 did not "revive" his claim that was already time-barred.

Although the facts in this case are somewhat unique, the broader significance of this opinion is that the Georgia courts ultimately upheld both the statute of limitation defense pertaining to the time period to file an initial claim and the statute of limitation defense pertaining to a recommencement of income benefits demonstrating that these remain very strong defenses in Georgia. Whenever a significant period of time passes between an accident date and the filing of a claim, between medical treatment visits, or after the payment of income benefits, one should be aware of the potential for one of the Georgia Workers' Compensation Act's statute of limitation defenses to apply. Because of the technical nature of these defenses which should be assessed on a case-by-case basis and can be waived if not raised in a timely-fashion, please do not hesitate to contact a Swift Currie attorney to review the facts of your case and determine the employer/insurer's rights and potential defenses.

If you wish to further discuss these issues, please contact a Swift, Currie, McGhee & Hiers' attorney via our website — [www.swiftcurrie.com](http://www.swiftcurrie.com).

The foregoing is not intended to be a comprehensive analysis of the full effect of these changes. Nothing in this notice should be construed as legal advice. This document is intended only to notify our clients and other interested parties about important recent developments. Every effort has been made to ascertain the accuracy of the information contained within this notice.