



Court Finds SB 7 Prospective

by James B. Yates and Sarah E. Pawlicki

On February 5, 2009, the Ohio Supreme Court issued its decision in *Thorton v. Montville Plastics & Rubber*, stating that the challenged portions of Amended Substitute Senate Bill 7 (SB 7) took effect on August 25, 2006. Before the Court was the question: “When can a claimant dismiss an employer’s court appeal of a workers’ compensation claim?” Prior to the passage of SB 7, the Ohio Supreme Court held that even though an employer files the appeal to court, a claimant could voluntarily dismiss the employer’s appeal so long as the claimant re-filed the case within one year of the dismissal. Senate Bill 7 prohibits a claimant from dismissing an employer’s appeal to common pleas court without the employer’s consent. Since the passage of SB 7, however, there has been some dispute regarding the application of portions of the amendments contained in the bill to claims that arose before the “effective date.” There also was some dispute over the actual effective date of the statute, since portions of the statute were challenged by an unsuccessful referendum. In *Thorton*, the Supreme Court resolved both disputes and stated that the challenged portions of SB 7 are to be applied prospectively to all claims arising on or after August 25, 2006.

In *Thorton*, the employer appealed a claim allowance for a June 27, 2005, injury into court. Immediately before trial, the claimant filed a voluntary dismissal of the employer’s appeal. The employer argued the claimant was not permitted to voluntarily dismiss the employer’s appeal after the

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enactment of SB 7. The Ohio Supreme Court disagreed. In essence, the Court held that because uncodified language of SB 7 expressly stated that the provisions were to be applied prospectively (except for the amendment to ORC 4123.512(H) which the uncodified language expressly stated was to be applied retroactively), SB 7 does not apply to claims arising before the effective date of the Act. The Court noted that the portions of the bill challenged by the referendum became effective on August 25, 2006, the date the Ohio Secretary of State issued a letter to the petitioners informing them they did not have enough signatures to place the referendum on the November 2006 ballot. August 25, 2006, is seven weeks earlier than the October 11, 2006, date the Ohio Industrial Commission had deemed the “effective date.”

What does the *Thorton* decision mean for Ohio employers? In short, the decision means that for all claims arising before August 25, 2006, the claimant may dismiss an employer’s appeal to common pleas court without the employer’s consent. Arguably, a footnote in the *Thorton* decision also stands for the proposition that the other challenged portions of SB 7 are effective as of August 25, 2006 (e.g., “substantial aggravation” standard, elimination of “Bailey” claims, increase in attorneys’ fees). The effective date for those portions of the bill that were not challenged (e.g., waiting period for PPD applications shortened to 26 weeks, increased award for facial disfigurement, increased penalties to employers paying premiums late) remains June 30, 2006. Employers should review claims with dates of injury arising in mid-2006 to determine whether SB 7 is applicable and consult counsel with questions regarding the implications of the *Thorton* decision.



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