ESTATE OF GEORGE FOURNIER and
DORIS FOURNIER
(Appellees)

v.

WADE & SEARWAY,
(Appellant)

and

RELIANCE INSURANCE COMPANY IN LIQUIDATION C/O MAINE INSURANCE GUARANTEE ASSOCIATION

Argued: February 4, 2016
Decided: March 21, 2017

PANEL MEMBERS: Administrative Law Judges Collier, Jerome, and Knopf
BY: Administrative Law Judge Collier

[¶1] Wade & Searway and Reliance Insurance Company in liquidation, c/o Maine Insurance Guaranty Association (MIGA), appeal from a decision of a Workers' Compensation Board administrative law judge (*Goodnough, ALJ*) granting the petitions for compensation filed by Doris Fournier and the Estate of George Fournier (collectively, "the Estate"). Wade & Searway and MIGA contend, among other issues, that the Estate's claims were time-barred by the applicable version of 24-A M.R.S.A. § 4438 (2015). Because we agree with this contention, we vacate the decision and remand with instructions to deny the petitions as against Wade & Searway and MIGA.

I. BACKGROUND

[¶2] George Fournier worked as a union sheet metal worker for more than 35 years before retiring in 1990. Mr. Fournier died on March 12, 2010, from esophageal cancer. Following his death, his widow, Doris Fournier, filed a number of petitions against various employers seeking compensation. On August 14, 2012, she filed two petitions against Wade & Searway and Reliance/MIGA: (1) a Petition for Award—Occupational Disease Law, in her capacity as Personal Representative of his Estate, seeking benefits for the period up to Mr. Fournier's death; and (2) a Petition for Award—Occupational Disease Law—Fatal, as his widow and sole dependent, seeking death benefits pursuant to 39-A M.R.S.A. § 215 (Supp. 2016). The petitions alleged that Mr. Fournier was injuriously exposed to asbestos while working on a maintenance project at the International Paper mill in Jay, Maine, from July 3 through July 5, 1984.

[¶3] In July of 1984, Wade & Searway was insured for workers' compensation claims by Reliance Insurance Company. On October 3, 2001, a Pennsylvania court issued a Liquidation Order, finding Reliance to be insolvent and setting a deadline of December 31, 2003, for claims to be brought against Reliance. In response to the Estate's petitions, MIGA filed a timely Notice of Controversy (NOC) asserting a time-bar defense, and in July of 2013 it filed

a Motion to Dismiss the petitions, arguing in part that they were not timely filed pursuant to 24-A M.R.S.A. § 4438.

[¶4] The ALJ denied the Motion by Order dated December 5, 2013, and proceeded to grant the Estate's petitions, awarding benefits as against Wade & Searway pursuant to 39-A M.R.S.A. § 614 (2001), and denying the petitions filed against all other employers. Wade & Searway and MIGA filed this appeal.

II. DISCUSSION

A. Standard of Review

[¶5] The role of the Appellate Division on appeal is "limited to assuring that the [ALJ's] factual findings are supported by competent evidence, that [the] decision involved no misconception of applicable law and that the application of the law to the facts was neither arbitrary nor without rational foundation." *Pomerleau v. United Parcel Serv.*, 464 A.2d 206, 209 (Me. 1983) (quotation marks omitted). "When construing provisions of the Workers' Compensation Act, our purpose is to give effect to the Legislature's intent." *Hanson v. S.D. Warren Co*., 2010 ME 51, ¶ 12, 997 A.2d 730. "In so doing, we first look to the plain meaning of the statutory language, and construe that language to avoid absurd, illogical, or inconsistent results." *Id*. We also consider "the whole statutory scheme of which the section at issue forms a part so that a harmonious result, presumably the intent of the Legislature, may be achieved." *Davis v. Scott Paper Co*., 507 A.2d 581, 583

(Me. 1986). "If the statutory language is ambiguous, we then look beyond the plain meaning and consider other indicia of legislative intent, including legislative history." *Damon v. S.D. Warren Co*., 2010 ME 24, ¶ 10, 990 A.2d 1028. "Statutory language is ambiguous if it is reasonably susceptible of different interpretations." *Id*.

B. Timeliness of Petitions

[¶6] MIGA is a nonprofit legal entity that was established by statute, 24-A M.R.S.A. §§ 4431-52 (2015), to provide a limited form of protection from the results of insurer insolvencies. *See Juliano v. Ameri-cana Transport*, 2007 ME 9, ¶¶ 8-9, 912 A.2d 1244; *Ventulett v. Me. Ins. Guar. Ass'n*, 583 A.2d 1022, 1023 (Me. 1990). By the terms of the MIGA Act, MIGA is responsible for paying "covered claims" and must "deny all other claims." 24-A M.R.S.A. § 4438(1)(D). MIGA argues that Ms. Fournier's claims are not covered claims because they were not timely filed.

[¶7] The provision in the MIGA Act describing a "covered claim" that was in effect on October 3, 2001, when Reliance Insurance Company was declared insolvent by the Pennsylvania court, excluded "any claim filed with the association after the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer." 24-A M.R.S.A. § 4438 (2001) (subsequently amended by P.L. 2001, ch. 478, § 8) (the "prior version.") The Pennsylvania court

established December 31, 2003, as the deadline for bringing claims against Reliance Insurance Company. The Estate brought its claims by filing petitions on August 14, 2012, more than eight years after that deadline.

[¶8] Section 4438(1)(A) of the MIGA Act was amended, effective July 25, 2002, (after the Reliance insolvency) to provide a "good cause" exception to the time bar provision. The amended version of the statute states, in relevant part, with amendments indicated:

> Notwithstanding any other provisions of this subchapter, a covered claim shall ~~does~~ not include any claim filed with the association after the earlier of 24 months after the date of the order of liquidation or the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer. The association, in its discretion, may accept a late filed claim as a covered claim when the claimant demonstrates good cause. The demonstration of good cause by a claimant includes showing that the existence of the claim was not known to the claimant prior to the bar date and that the claimant filed the claim within 60 days of learning of the claim.

24-A M.R.S.A. § 4438 (2015) (as amended by P.L. 2001, c. 478, § 8). The Public Law also included an "application" provision, which states:

> This Act applies to the obligations of the Maine Insurance Guaranty Association, established pursuant to Maine Revised Statutes, Title 24-A, section 4436, under policies of insolvent insurers as these obligations exist on or after the effective date of this Act, except that the first-party exclusion contained in Title 24-A, section 4435, subsection 4; the unearned premium cap and *the bar date contained in Title 24-A, section 4438, subsection 1, paragraph A*; and the right of intervention contained in Title 24-A, section 4438, subsection 2, paragraph C *apply only to new insolvencies occurring on or after the effective date of this Act*.

P.L. 2001, c. 478, § 11 (unallocated) (emphasis added in italics).

[¶9] The ALJ determined and the Estate contends that the Estate's claims were timely because the reference to the "bar date" provision in the application section, requiring prospective-only application of that provision, did not also expressly refer to the "good cause" exception language in the amendment; thus, the good cause exception was intended to be applied to existing obligations of MIGA. The ALJ stated: "The question therefore becomes whether the 'good cause exception' language is the functional equivalent (for purposes of prospective application) of the 'bar date' set forth in the 2002 amendments to the statute." The ALJ concluded that it was not, because "the good cause exception, unlike the two year bar date, was not singled-out for prospective-only application"; and the "good cause exception is tied to the bar date only in the limited sense that a demonstration of good cause can be made by showing that the existence of the claim was not known to the claimant prior to the (newly-enacted) 24 month bar date."

[¶10] We disagree with this analysis. Pursuant to the plain language of the amendment's application provision, the bar date provision applies only prospectively. Construing the statute, we conclude that the good cause exception to the bar date provision plainly also applies only prospectively, and thus, it does not apply to the pre-occurring Reliance Insurance Company insolvency.

[¶11] Statutes are presumed to apply only prospectively unless the Legislature includes "strong, clear, and imperative language" directing otherwise. *Terry v. St. Regis Paper Co*., 459 A.2d 1106, 1109 (Me. 1983). Although the language in the application provision refers only to "the bar date" and does not expressly refer to the good cause exception, when looking at the statutory scheme of which the section forms a part, we conclude that the rule and the exception are inextricably bound. They appear together in the text of the amendment in the same paragraph without any separation, division, or demarcation, and they share common language, structure, context, and subject matter. Moreover, the reference to the rule in the application section logically includes the rule itself as well as the articulated exception to the rule. The application section's reference to "the bar date" plainly includes, rather than excludes, the good cause exception to the bar date. We see no clear legislative intent otherwise.

[¶12] The Estate also contends that a 2006 amendment to 24-A M.R.S.A. § 4445 (2015), P.L. 2005, ch. 603 (effective August 23, 2006), supersedes the time-bar provision and requires MIGA to pay any claims arising out of the Workers' Compensation Act. Section 4445, with amendments indicated, provides:

> **§ 4445 Examination of the association**
>
> The association shall be subject to examination and regulation by the superintendent. The board of directors shall submit, not later than March 30th of each year, a financial report for the preceding calendar year in a form approved by the superintendent.

> The association is also subject to audit, enforcement and monitoring by the Workers' Compensation Board with respect to workers' compensation claims as provided for in the Maine Workers' Compensation Act of 1992. *Notwithstanding any other provision of law, the association is liable for the payment of any compensation, interest, penalty or other obligation determined to be due by the Workers' Compensation Board as provided for in the Maine Workers' Compensation Act of 1992*. The Workers' Compensation Board may not assess the association penalties for the acts or omissions of insolvent insurers.

(Emphasis added in italics).

[¶13] The Estate failed to raise this point at the hearing level and may have forfeited appellate consideration. *See Morey v. Stratton*, 2000 ME 147, ¶¶ 8-10, 756 A.2d 496 (emphasizing "the importance of bringing the specific challenge to the attention of the trial court at a time when the court may consider and react to the challenge"). However, because we are asked to construe the statute of which section 4445 forms a part, we consider whether the 2006 amendment to section 4445 would change our analysis. It would not.

[¶14] Both section 4445, subjecting MIGA to audit and establishing its liability for workers' compensation claims, and section 4438, defining covered claims, contain a "notwithstanding" clause that could be read to establish the precedence of each section. Section 4438 requires MIGA to pay all covered claims to the extent of its obligations; however, it also requires MIGA to "deny all other claims" that are not covered. 24-A M.R.S.A. § 4438(1)(A), (D). We do not read

section 4445 to require MIGA to pay a workers' compensation claim that is not a "covered claim." *Cf. Juliano*, 2007 ME 9, ¶¶ 15-17, 912 A.2d 1244 (holding, in a multiple injury case decided after effective date of the 2006 amendment and without discussing it, that MIGA was not required to reimburse the insurer on the most recent injury for benefits paid or inflation adjustments under 39-A M.R.S.A. § 354 because subrogation recoveries were excluded from the definition of "covered claim" under the MIGA Act).

III. CONCLUSION

[¶15] The Estate's claims against Wade & Searway and Reliance Insurance c/o MIGA are time-barred pursuant to section 4438 and are thus not covered claims under the MIGA Act. Because this issue is dispositive, we do not address MIGA's additional contentions.

The entry is:

> The administrative law judge's decision is vacated and the case remanded with instructions that the petitions against Wade & Searway and Reliance Insurance c/o MIGA be denied, and for such further proceedings as may be necessary to resolve any remaining petitions filed by the Estate.

Any party in interest may request an appeal to the Maine Law Court by filing a copy of this decision with the clerk of the Law Court within twenty days of receipt of this decision and by filing a petition seeking appellate review within twenty days thereafter. 39-A M.R.S.A. § 322 (Supp. 2016).

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