

1977

# Del Monte Corporation v. The Industrial Commission of Utah : Brief of Claimant

Utah Supreme Court

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## Recommended Citation

Legal Brief, *Del Monte Corp. v. Industrial Comm. Of Utah*, No. 15218 (Utah Supreme Court, 1977).  
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IN THE SUPREME COURT

IN THE

STATE OF UTAH

\* \* \* \* \*

DEL MONTE CORPORATION, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 THE INDUSTRIAL COMMISSION )  
 OF UTAH, )  
 )  
 Defendant. )

Case No. 15218

\* \* \* \* \*

BRIEF OF CLAIMANT, WILFORD J. MOORE

\* \* \* \* \*

Review of an award of the  
Utah Industrial Commission

\* \* \* \* \*

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FILED

NOV 17 1977

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	:	Case No. 15218
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OF UTAH,	:	
	)	
Defendant.	:	

\* \* \* \* \*

BRIEF OF CLAIMANT, WILFORD J. MOORE

\* \* \* \* \*

NATURE OF CASE

This is a review of the decision of the Utah State Industrial Commission increasing claimant's percentage of permanent partial disability, and awarding additional benefits according to statute.

DISPOSITION BY THE COMMISSION

Claimant does not dispute plaintiff's statement thereunder.

RELIEF SOUGHT ON REVIEW

Claimant Wilford J. Moore, seeks affirmation of the

decision of the Industrial Commission.

#### STATEMENT OF FACTS

Plaintiff's statement of facts regarding claimant's original injuries, and compensation determined by the Commission are essentially correct. However, there is no competent evidence before the Commission regarding the circumstances surrounding claimant's recurrence of the original back injury; and at no point in the proceedings before the Commission did plaintiff dispute the fact that the subsequent injury and surgery were indeed a recurrence of the original injury. In fact, plaintiff voluntarily paid all of claimant's medical expenses occasioned by the recurrence of the original injury.

Plaintiff did decline to pay claimant any further sums for permanent partial disability as a result of his application for compensation filed on November 20, 1975. However, the Administrative Trial Judge determined to rule in favor of Mr. Moore on the legal issue involving the statute of limitations on or about November 4, 1976, following submission of a memorandum of authority by plaintiff and written legal arguments by counsel for plaintiff and claimant. Subsequent thereto, counsel for plaintiff and claimant requested the matter be referred to a medical panel to determine whether a compensable increase in permanent partial disability existed prior to formalizing the decision on the question

of law.

Following findings of increased permanent partial disability by the medical panel, an order was entered by the Commission on March 29, 1977, reviewed on motion of plaintiff by the entire Commission and affirmed on April 22, 1977.

#### ARGUMENT

##### POINT I

THE CURRENT EIGHT (8) YEAR STATUTE OF LIMITATIONS WAS IN FULL FORCE AND EFFECT PRIOR TO THE RUNNING OF THE SIX (6) YEAR STATUTE OF LIMITATIONS AGAINST CLAIMANT, HIS CLAIM HAVING NEVER BEEN BARRED BY THE SIX (6) YEAR STATUTE OF LIMITATIONS.

It is not necessary that the Eight (8) year statute of limitations be given retroactive effect to be applicable to claimant, since claimant's injury was never barred by the then existing statute of limitations. Clearly, cases cited by plaintiff in support of its proposition to the contrary are inapplicable to claimant's case, particularly those cases involving a shortening of the statute of limitations. Indeed, the general rule seems to be that where statutes of limitation are amended to extend already existing statutes, the extended statute applies to pre-existing claims not already barred. 51 Am Jur 2d, Limitation of Actions, § 41; State Tax Commission v. Spanish Fork, 199 Utah 177, 100 P.2d 575, 79 ALR2d 1100, § 11.



The instant case is in no way comparable to U. S. Smelting and Refining Company v. Nielsen, 19 U.2d 239, 430 P.2d 162. There, the Six (6) year statute of limitations had run some Seven (7) years prior to Nielsen's claim, Nielsen asserted that his injury and disability occurred at the same time, and Nielsen accepted a lump sum settlement in exchange for a Six (6) year period of compensation. The factual distinctions between the Nielsen case and the instant case are both significant and obvious.

The other case heavily relied upon by plaintiff Kennecott Copper Corporation v. Anderson, 20 U.2d 102, 514 P.2d 217, is equally inapplicable to the instant case since the claimant in that case filed an application for permanent partial disability benefits some Thirteen (13) years subsequent to his injury, and the court did not deal with a situation in which the statute of limitations was extended during a period within which the claimant was still covered by the original limitation period.

#### POINT II

THE RECURRENCE OF THE ORIGINAL INJURY, ESPECIALLY WHERE AN INCREASE IN THE PERCENTAGE OF PERMANENT PARTIAL DISABILITY OCCURS, IS, IN EFFECT, A "NEW" INJURY WITHIN THE MEANING OF 35-1-66, UTAH CODE ANN. (1953) AS AMENDED.

While it is apparent that it is in the interests of employers, especially those who are self-insured, the claims for

compensation be ultimately terminated, it is equally in the interests of an employee that complex injuries, particularly those susceptible to recurrence, such as back injuries, be compensable in the event of clear cut recurrence and/or aggravation.

The facts of the instant case with respect to claimant's additional permanent partial disability as a result of a recurrence of the original injury are not in dispute; and it would not do unbradge to the intention of the Legislature to hold that a clear cut, distinguishable recurrence of an original injury, such as in the instant case, amounts to a "new" injury within the meaning of 35-1-66, Utah Code Ann. (1953) as amended. Of course, such an interpretation would, in this case, put the claimant clearly within the current statute of limitations with respect to the recurrence.

#### POINT III

THE SIX (6) YEAR STATUTE OF LIMITATIONS RELATES TO THE PERIOD FOR WHICH PERANENT PARTIAL DISABILITY MAY BE AWARDED, AND NOT THE CALENDAR PERIOD DATING FROM THE INJURY.

In the interest of brevity, the point above stated is well treated in Justice Ellett's dissenting opinion in Nielsen, supra and the Court is commended thereto.

#### POINT IV

IF THE COURT FINDS THAT CLAIMANT IS ENTITLED TO AN AWARD FOR

PERMANENT PARTIAL DISABILITY, THE FINDINGS OF THE COMMISSION  
ELATING TO THE PERCENTAGE THEREOF AND AWARD THEREUNDER ARE  
ONCLUSIVE AND FINAL.

The foregoing point is stated in 35-1-85 Utah Code Ann.  
(1953) and cases decided thereunder and claimant is entitled to an  
affirmance of the Commission's award if the Court determines he is  
entitled to benefits for permanent partial disability as a result  
of the recurrence.

#### CONCLUSION

Claimant's original industrial accident in 1968 resulted  
in additional permanent partial disability following a 1974  
recurrence. At no time has his claim been barred by any statute  
of limitations in effect at any time during the proceedings before  
the Industrial Commission, a "new" injury occurred, or the original  
period applied only to the amount of the award and claimant is  
entitled to an affirmance of the Commission's award.

Respectfully submitted,

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