Supreme Court of Louisiana

FOR IMMEDIATE NEWS RELEASE NEWS RELEASE #013

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **24th day of March, 2021** are as follows:

BY Weimer, C.J.:

2020-C-00693 JAMES J. HARTMAN, JR. VS. ST. BERNARD PARISH FIRE DEPARTMENT & FARA (Office of Workers' Compensation, District 7)

AFFIRMED. SEE OPINION.

Hughes, J., additionally concurs and assigns reasons.
Crichton, J., additionally concurs and assigns reasons.
Genovese, J., additionally concurs and assigns reasons.
McCallum, J., additionally concurs for the reasons assigned by Justice Crichton.
Griffin, J., additionally concurs and assigns reasons.

03/24/21

SUPREME COURT OF LOUISIANA

NO. 2020-C-00693

JAMES J. HARTMAN, JR.

VERSUS

ST. BERNARD PARISH FIRE DEPARTMENT & FARA

On Writ of Certiorari to the Court of Appeal, Fourth Circuit, Office of Workers' Compensation, District 7

WEIMER, Chief Justice

In this case, we are called on to decide a question left unresolved in **Arrant v. Graphic Packing International, Inc.**, 13-2878, 13-2981 (La. 5/5/15), 169 So.3d 296–whether an employee who suffers from noise-induced hearing loss is entitled to indemnity benefits pursuant to La. R.S. 23:1221(4)(p), which confers such benefits to employees who sustain "a permanent hearing loss solely due to a single traumatic accident." Finding that cumulative hearing loss incurred as a result of repeated exposure to high noise levels on the job does not constitute "a permanent hearing loss solely due to a single traumatic accident" as required for the award of permanent partial disability benefits pursuant to La. R.S. 23:1221(4)(p), we affirm the judgments below.

FACTS AND PROCEDURAL HISTORY

The salient facts of this case are not in dispute. In fact, the facts were the subject of stipulation at trial.

James J. Hartman, Jr. has been employed by the St. Bernard Parish Fire Department since May 25, 1990, and (as of the date of the filing of his claim) remains on the job, serving as a District Chief. He has never been disabled from performing the duties of his position.

During the course of his employment with the Fire Department, Mr. Hartman was exposed to injurious levels of noise, which resulted in permanent hearing loss. The Department was informed of Mr. Hartman's hearing loss on September 20, 2006. He underwent audiograms on January 24, 2008, April 10, 2014, March 1, 2017, and September 27, 2017. Each test showed a gradual increase in hearing loss. The last audiogram, performed by Dr. Daniel Bode on September 27, 2017, shows a 42.2% binaural hearing loss. Dr. Bode opined that repeated exposure to loud noises for extended periods of time (specifically, from 1990-2017) was "likely a contributing factor to [Mr. Hartman's] bilateral sensorineural hearing loss."

Mr. Hartman filed a disputed claim for compensation seeking permanent partial disability benefits for hearing loss pursuant to La. R.S. 23:1221(4)(p). The Fire Department opposed the claim asserting, among other things, that Mr. Hartman's claim for work-related hearing loss is not covered by La. R.S. 23:1221(4)(p), which applies only where the permanent hearing loss is "solely due to a single traumatic accident." The case was fixed for trial and the parties stipulated to the facts recited above. In addition, they stipulated that the Fire Department currently provides medical benefits to Mr. Hartman for his hearing loss pursuant to La. R.S. 33:2581.1 and that, given Mr. Hartman's employment dates, the current versions of La. R.S. 23:1021(1), 23:1221(4)(p), and 23:1031(B) and (E) are the statutes applicable to Mr. Hartman's claim. The case was submitted on the stipulations and the briefs of the parties.

On December 10, 2019, a judgment was rendered in favor of the Fire Department, dismissing Mr. Hartman's claim. In that judgment, the Office of Workers' Compensation judge determined that Mr. Hartman's hearing loss is a cumulative hearing loss that occurred over time as a result of his exposure to injurious noise, and not the result of a single traumatic event such as would entitle him to permanent partial disability benefits under La. R.S. 23:1221(4)(p). In written reasons, the judge explained:

> Upon reviewing the medical evidence and medical testimony, the Court concludes that Claimant's hearing loss is a cumulative hearing loss not covered under La. R.S. 23:1221(4)(p) which provides benefits to an employee who suffers a permanent hearing loss *solely due to a single traumatic accident* (emphasis added). ... Unfortunately, as written, La. R.S. 23:1221(4)(p) does not provide benefits for cumulative hearing loss.

Mr. Hartman appealed and the Court of Appeal, Fourth Circuit, affirmed. **Hartman v. St. Bernard Parish Fire Department & Fara**, 20-0103 (La.App. 4 Cir. 5/20/20), 301 So.3d 562. Like the Office of Workers' Compensation judge, the court of appeal rejected the contention that Mr. Hartman is entitled to permanent partial disability benefits pursuant to La. R.S. 23:1221(4)(p). ***Id.***

The court of appeal began its discussion by distinguishing this court's opinion in **Arrant v. Graphic Packaging International, Inc.**, 13-2878, 13-2981 (La. 5/5/15), 169 So.3d 296, which held that an employee's gradual noise-induced hearing loss constituted both an injury by accident and an occupational disease under the Louisiana Workers' Compensation Act ("LWCA") such that the employer was entitled to immunity from suits in tort. The court of appeal noted that while **Arrant** held that noise-induced hearing loss falls within the parameters of the LWCA, the court made no affirmative finding that gradual hearing loss is compensable under La. R.S. 23:1221(4)(p). Indeed, the court of appeal noted, "notwithstanding the potential

compensability of any work-related accident and injury, the employer's mandate to pay workers' compensation indemnity benefits is limited to those employees who meet the statutory conditions imposed by the LWCA." **Hartman**, 20-0103 at 4, 301 So.3d at 565.

Turning to the statutory conditions–the language of La. R.S. 23:1221(4)(p)–the court of appeal pointed out that the statute only authorizes payment of permanent partial disability benefits to an employee who suffers hearing loss based "solely" on a "single traumatic accident." ***Id.*****,** 20-0103 at 6, 301 So.3d at 565. Finding the words of the statute to be clear and unambiguous, the court of appeal rejected Mr. Hartman's suggestion that the statute should be read more expansively to include hearing losses arising out of multiple single incidents. It likewise rejected Mr. Hartman's assertion that a contrary reading would unconstitutionally deprive him of a remedy. ***Id.*****,** 20-0103 at 7, 301 So.3d at 566.

Applying the unequivocal language of La. R.S. 23:1221(4)(p) to the medical evidence, the court of appeal determined that Mr. Hartman's permanent hearing loss did not result solely from a single traumatic accident; thus, he did not meet his burden of proving that he met the statutory conditions imposed for the award of indemnity benefits. ***Id.***, 20-0103 at 7-8, 301 So.3d at 566. As a result, the court affirmed the judgment of the Office of Workers' Compensation denying Mr. Hartman permanent partial disability benefits under La. R.S. 23:1221(4)(p). ***Id.***

Upon Mr. Hartman's application, we granted certiorari to review the correctness of the rulings below in light of our decision in **Arrant** and to dispel any confusion that may have arisen from our opinion in that case. **Hartman v. St. Bernard Parish Fire Department & Fara**, 20-00693 (La. 10/20/20), 303 So.3d 319.

LAW AND ANALYSIS

The facts in this case are undisputed. The issue presented is solely a question of law, requiring the interpretation of a statute. Thus, our review is *de novo*. **Louisiana Municipal Association v. State**, 04-0227 at p. 35 (La. 1/19/05), 893 So.2d 809, 836.

The statute at issue in this case is La. R.S. 23:1221(4), which sets forth the conditions for an award of permanent partial disability benefits under the LWCA. It provides, in pertinent part:

> In the following cases, compensation shall be solely for anatomical loss of use or amputation and shall be as follows:
>
> . . . .
>
> (p) In cases not falling within any of the provisions already made, where the employee is seriously and permanently disfigured or suffers a **permanent hearing loss solely due to a single traumatic accident** ..., compensation not to exceed sixty-six and two-thirds percent of wages not to exceed one hundred weeks may be awarded. ... [Emphasis added.]

Mr. Hartman asserts that his hearing loss resulting from occupational exposure to excessive noise is compensable under this statute because that hearing loss was caused by a series of individual traumatic accidents, each one immediately causing injury, although the damage only became perceptible over time. For this proposition, he relies on this court's decision in **Arrant**.

In **Arrant**, current and former employees of a manufacturing facility filed a tort suit against their employer seeking damages arising from hearing loss sustained as a result of repeated exposure to hazardous levels of industrial noise over the course of their employment. The employer opposed the suit, seeking immunity in tort under the LWCA. After proceeding through the lower courts, this court granted writs of certiorari in the case to address the *res nova* issue "of whether gradual noise induced hearing loss caused by occupational exposure to hazardous noise levels is a personal injury by accident or an occupational disease, or both, under the Louisiana Workers'

Compensation Act ..., thereby entitling the defendant employer to immunity from suits in tort under the exclusivity provisions of the LWCA." **Arrant**, 13-2878 at 2, 169 So.3d at 298.

In answering the question posed, the court first discussed the history of the LWCA. The court noted that prior to 1990, La. R.S. 23:1021 defined the terms "accident" and "personal injury" as follows:

> (1) "Accident" means an unexpected or unforeseen event happening suddenly or violently, with or without human fault and producing at the time objective symptoms of an injury ....
>
> (7) "Injury" and "Personal Injuries" includes only injuries by violence to the physical structure of the body and such disease or infections as naturally result therefrom. These terms shall in no case be construed to include any other form of disease or derangement, howsoever caused or contracted.

Id., 13-2878 at 9, 169 So.3d at 302 (quoting La. R.S. 23:1201).

The court then noted that in response to legislative action defining occupational diseases under the LWCA more expansively to include repetitive injuries that result in a gradual deterioration or progressive degeneration, such as carpal tunnel syndrome, the legislature revised the definition of "accident" in 1990 to provide:

> (1) "Accident" means an unexpected or unforeseen actual, identifiable, precipitous event happening suddenly or violently, with or without human fault, and directly producing at the time objective findings of an injury **which is more than simply a gradual deterioration of progressive degeneration**. [Emphasis added.]

Id., 13-2878 at 12, 169 So.3d at 304.

After reviewing this legislative history, the court turned to the question before it: whether noise-induced hearing loss qualifies as a "personal injury by accident" *under the pre-1990 definition of "accident."* ***Id.***, 13-2878 at 14, 169 So.3d at 305. In determining that the **Arrant** plaintiffs suffered "an unexpected or unforeseen event happening suddenly or violently," within the meaning of the pre-1990 definition of

"accident," the court relied on the opinion of the plaintiffs' expert, Dr. Ross Roeser, who opined that excessive noise causes immediate injury to the inner ear, even though the effect of the damage thereto only gradually becomes perceptible over time and only with repeated or continuous exposures to the hazardous levels of noise:

> [Dr. Roeser] testified that the snail-shaped structure [in the ear] is the auditory portion of the inner-ear called the cochlea. He explained the cochlea has two and a half turns, which, if unrolled longitudinally, could be said to be "tonotopically"organized. He explained that "tonotopically" means each distinct anatomical part is responsible for a different frequency, and high frequencies of sound are heard close to where the mechanical force enters the cochlea. This is consistent with Dr. Roeser's testimony in a previous [noise-induced hearing loss] case, in which he explained that, when a high level of energy enters the cochlea "it literally destroys, it damages and destroys that row of hair cells in that particular part of the ear." **Thus, there is an immediate injury to the inner ear, even though the effect of the damage thereto only gradually becomes perceptible over time and only with repeated or continuous exposures to the hazardous levels of noise. In this regard, the excessive noise is a traumatic injury to the ear.** This is not a long-latency occupational disease case. **The damage to the inner ear is immediate, though imperceptible until the damage cumulates into a measurable hearing shift or loss.**
>
> Such traumatic damage to the inner ear certainly qualifies as an "injury" within the meaning of the LWCA, because the high levels of energy noise entering the ear cause damage to the inner ear "by violence to the physical structure of the body," i.e., the hairs and cells in the inner ear. Furthermore, **the exposure to hazardous levels of industrial noise, as alleged by the plaintiffs, qualifies as an accident because the hazardous level of industrial noise, a large quantity of energy that did violence and damage to the inner ear, was an "unexpected or unforeseen event happening suddenly or violently, with or without human fault and producing at the time objective symptoms of an injury.**" [Citations omitted; emphasis added.]

Id., 13-2878 at 18-19, 169 So.3d at 307-308.

Mr. Hartman relies on this language to argue that the science behind hearing loss, as explained by the court in **Arrant**, establishes that occupational exposure to hazardous levels of noise is a "single traumatic accident" and that the permanent hearing loss for which he seeks benefits is the result of multiple single traumatic

accidents, each of which caused immediate injury. Unfortunately, Mr. Hartman reads this court's language in **Arrant** too expansively.

In **Arrant**, we limited our holding that noise-induced hearing loss qualifies as a "personal injury by accident" to the pre-1990 definition of "accident" contained in La. R.S. 23:1021(1), specifically noting that "[w]e need not decide whether [noise-induced hearing loss] falls within the definition of 'accident' since the 1990 revision of La. Rev.Stat. 23:1021(1), because ... we also find that, since 1975 at least, [noise-induced hearing loss] is a covered 'occupational disease.'" ***Id.***, 13-2878 at 14 n.3, 169 So.3d at 305 n.3. Indeed, as we noted, the **Arrant** plaintiffs did not argue that noise-induced hearing loss falls within the post-1990 revision of the definition of "accident." ***Id.***, 13-2878 at 12, 169 So.3d at 304. Nor does Mr. Hartman make that specific argument here, having brought his claim as one for occupational disease.

Moreover, the issue the court addressed in **Arrant** was limited to whether the plaintiffs in that case had a remedy for noise-induced hearing loss under the LWCA that prevented them from bringing suit against their employer in tort. Significantly, the court did not address whether the plaintiffs were entitled to any specific benefits under the LWCA, noting instead that entitlement to benefits "is a matter of proof at trial." ***Id.***, 13-2878 at 23, 169 So.3d at 310.

In this case, therefore, we are presented with the issue left unresolved in **Arrant**: whether Mr. Hartman's work-related noise-induced hearing loss entitles him to benefits under La. R.S. 23:1221(4)(p). To answer this question, we rely on well-settled rules of statutory interpretation.

The fundamental question in all cases of statutory interpretation is legislative intent. **Moss v. State**, 05-1963 at p. 15 (La. 4/4/06), 925 So.2d 1185, 1196. Ascertainment of that intent is accomplished through the rules of statutory

interpretation. ***Id.*** Pursuant to those rules, the starting point in the interpretation of any statute is the language of the statute itself. **Touchard v. Williams**, 617 So.2d 885, 888 (La. 1983). When a law is clear and unambiguous and its application does not lead to absurd consequences, the law must be applied as written, and no further interpretation may be made in search of the legislative intent. La. C.C. art. 9; La. R.S. 1:4. Unequivocal provisions are not subject to judicial construction and should be applied by giving the words their generally prevailing meaning, with words of art and technical terms accorded their technical meaning. La. C.C. art. 11; La. R.S. 1:3. Further, it is presumed that every word, sentence, or provision in a statute was intended to serve some useful purpose, that some effect is to be given to each such provision, and that no unnecessary words or provision were employed. **Moss**, 05-1963 at 15, 925 So.2d at 1196. As a result, courts are bound, if possible, to give effect to all parts of a statute and to construe no sentence, clause, or word as meaningless and surplusage if a construction giving force to, and preserving, all words can legitimately be found. ***Id.*** Finally, laws on the same subject matter are to be interpreted in reference to each other. La. C.C. art. 13.

In addition to the above principles which guide courts in determining legislative intent, the legislature has enacted specific rules for the interpretation of the provisions of the LWCA. Pertinent to our consideration are La. R.S. 23:1020.1(D)(2), which directs that "the laws pertaining to workers' compensation shall be construed in accordance with the basic principles of statutory construction and not in favor of either employer or employee," and La. R.S. 23:1021.1(D)(3) which instructs that "[i]f the workers' compensation statutes are to be liberalized, broadened, or narrowed, such actions shall be the exclusive purview of the legislature."

With these principles in mind, we note that the language to be construed in this case is La. R.S. 23:1221(4)(p)'s directive that permanent partial disability benefits not to exceed sixty-six and two-thirds percent of wages for a period not to exceed one hundred weeks may be awarded "where the employee ... suffers a permanent hearing loss **solely due to a single traumatic accident**." (Emphasis added.) We find, as did the lower courts, that these words are clear and unambiguous. According the words the generally prevailing meaning, as we must, we also find that the clear legislative intent expressed in the statute is to provide permanent partial disability benefits to an employee who suffers a permanent hearing loss *solely* (*i.e.*, to the exclusion of all else[1]) due to a *single* (*i.e.*, consisting of only one in number[2]) traumatic accident.

Here, the expert medical evidence presented through the report of Dr. Daniel Bode concludes that "Mr. Hartman's *repeated* exposures to loud noises for extended periods of time (1990-2017) is likely a *contributing* factor in his bilateral sensorineural hearing loss." (Emphasis added.) Obviously, "repeated" exposure is not synonymous with a "single" exposure; neither is a "contributing factor" synonymous with a "sole" one. The expert evidence in this case clearly disqualifies Mr. Hartman from indemnity benefits under La. R.S. 23:1221(4)(p).

Despite the plain words of the statute, relying on **Arrant**'s description of the injury process (each single burst of sound is a trauma that causes immediate injury qualifying as an accident), Mr. Hartman argues that his hearing loss is the result of a series of single traumatic accidents, entitling him to benefits under the statute. In short, Mr. Hartman would require the court re-write the language of La. R.S. 23:1221(4)(p) so as to provide disability benefits for permanent hearing loss "solely

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[1] WEBSTER'S NEW COLLEGIATE DICTIONARY 1106 (1973).

[2] WEBSTER'S NEW COLLEGIATE DICTIONARY 1083 (1973).

due to a *series* of single traumatic accidents," or to "*multiple* single traumatic accidents." This the court is not free to do.

Had the legislature intended to extend disability benefits for a "series" of traumatic accidents or "multiple" traumatic accidents, it could easily have done so by using those exact words. It did not. That the legislature deliberately chose to restrict the scope of partial permanent disability benefits by limiting compensability to permanent hearing loss caused by a single traumatic accident–and not a series of accidents–is confirmed by the 1986 amendment of La. R.S. 23:1221(4)(p). Prior to its amendment, La. R.S. 23:1221(4)(p) provided, in pertinent part, that "[i]n cases not falling within any of the provisions already made, ... where the usefulness of a physical function is seriously impaired, the court may allow such compensation as is reasonable ... ." Through 1985 La. Acts 926 § 1and 945 § 1, the legislature inserted the current language expressly limiting benefits to "permanent hearing loss solely due to a single traumatic accident." Thus, while Mr. Hartman's noise-induced hearing loss might arguably have entitled him to benefits under the pre-amendment version of La. R.S. 23:1221(4)(p), with the passage of the 1986 amendment, the legislature made clear its intent to restrict benefits to a certain type of hearing loss, drawing a distinction between cases in which a single exposure–such as a violent explosion–produces immediately apparent trauma in employees exposed to it, and those in which the loss is gradual and cumulative, produced by repeated exposure to hazardous levels of noise.

The legislature's deliberate choice in this regard is also confirmed by the definition of the word "accident" that applies in this case–the post-1990 definition which the parties stipulated as the applicable law. As explained above, the definition

of "accident" (a term of art in the context of the LWCA[3]) was amended by the legislature in 1990 to exclude from its ambit injury that is "simply a gradual deterioration or progressive degeneration." La. R.S. 23:1021.1. That noise-induced hearing loss is just such an injury is evidenced by the very explanation of the disease process Mr. Hartman draws on in **Arrant**. As we explained therein: "[T]here is an immediate injury to the inner ear, ... though the effect of the damage thereto only **gradually becomes perceptible over time** and only with **repeated or continuous exposure** to the hazardous levels of noise." (Emphasis added.) **Arrant**, 13-2878 at 18-19, 169 So.3d at 307-308. Clearly, Mr. Hartman's noise-induced hearing loss no longer qualifies as an "accident" as that term is defined by statute and as it appears in La. R.S. 23:1221(4)(p).

Mr. Hartman contends nevertheless that unless La. R.S. 23:1221(4)(p) is interpreted to provide indemnity benefits for his hearing loss, the *quid pro quo* which is at the core of the LWCA will be abrogated and he will be unconstitutionally deprived of a remedy at law, in violation of La. Const. art. I, § 22.

Unquestionably, the *quid pro quo* between employers and employees to which Mr. Hartman refers is essential to the LWCA. As we explained in **O'Regan v. Preferred Enterprises, Inc.**, 98-1602 (La. 3/17/00), 758 So.2d 124:

> The Workers' Compensation Act provides basic coverage for injuries sustained in the course of employment. The Act was a compromise between labor and industry pursuant to which laborers received guaranteed no-fault recovery and industry was relieved of the possibility of large damage awards in the tort system. That is, the employer agreed to pay on some claims for which there might have been no liability in exchange for the limited liability, and the employee agreed to give up available tort actions and remedies in exchange for sure and certain relief under the Act. This *quid pro quo* between employers and employees is central to the Act. Thus, it is a fundamental principle that the employee must have the possibility of recovery under the Act for this

[3] **O'Regan v. Preferred Enterprises, Inc.**, 98-1602 at pp. 9-10 (La. 3/17/00), 758 So.2d 124, 131.

> compromise to hold and for the scope of immunity from tort liability granted by the exclusivity provisions to hold.

Id., 98-1602 at 18, 758 So.2d at 136. Thus, we agree with Mr. Hartman that if the LWCA, and our interpretation of the provisions of La R.S. 23:1221(4)(p) in particular, leave him without a remedy under the Act, then the *quid pro quo* that forms the basis of the Act would be abrogated and he would be entitled to pursue a remedy in tort. However, this is not the case.

In this case, in addition to the permanent partial disability benefits Mr. Hartman sought, the LWCA provides three other categories of indemnity benefits: temporary total, permanent total, and supplemental earnings benefits. La. R.S. 23:1221(1)(2) and (3). Because Mr. Hartman stipulated that he has continued to work with his hearing loss and has not suffered a wage loss, he is not eligible for, and did not seek, indemnity benefits under these provisions. Furthermore, as explained above, the medical evidence in this case disqualifies him from permanent partial disability benefits under La. R.S. 23:1221(4)(p) because his hearing loss is cumulative, the result of repeated exposure to loud noises for extended periods of time, which is likely a "contributing factor" in his hearing loss and not "solely due to a single traumatic accident." However, this does not leave him without a remedy.

As the court of appeal in the **Arrant** case correctly recognized, upon proof of impairment of function, employees suffering from occupational noise-induced hearing loss *are* entitled to compensation under the LWCA, even if only under La. R.S. 23:1203,[4] which obligates the employer to furnish medical and vocational

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[4] La. R.S. 23:1203 provides, in relevant part:

> A. In every case coming under this Chapter, the employer shall furnish all necessary drugs, supplies, hospital care and services, medical and surgical treatment, and any nonmedical treatment recognized by the laws of this state as legal, and shall utilize such state, federal, public, or private facilities as will provide the injured employee with such necessary services. ....

rehabilitation expenses, prosthetic devices and other expenses. **Arrant v. Graphic Packaging Intern., Inc.**, 48,197 at 16 (La.App. 2 Cir. 9/25/13), 127 So.3d 924, 933, aff'd., 13-2878 (La. 5/5/15), 169 So.3d 296. Indeed, Mr. Hartman stipulated that his employer, the Fire Department, currently provides him with such medical benefits for his hearing loss pursuant to La. R.S. 33:2581.1, which provides, in pertinent part:

> Any loss of hearing which is ten percent greater than that of the affected employee's comparable age group in the general population and which develops during employment in the classified fire service in the state of Louisiana shall, for purposes of this Section only, be classified as a disease or infirmity connected with employment. **The employee affected shall be entitled to medical benefits including hearing prosthesis as granted by the laws of the state of Louisiana to which one suffering an occupational disease is entitled**, regardless of whether the fireman is on duty at the time he is stricken with the loss of hearing. .... [Emphasis added.]

La. R.S. 33:2581.1(A). This statute, which is among a group of statutes that address service-related occupational diseases suffered by firefighters, clearly adverts to the provisions of La. R.S. 23:1203 when it refers to "medical benefits including hearing prosthesis as granted by the laws of the state of Louisiana to which one suffering an occupational disease is entitled." The statute is, in effect, a legislative acknowledgment that, at a minimum, medical benefits under the LWCA are available as compensation to any employee who sustains occupational noise-induced hearing loss. Whether indemnity benefits are additionally available hinges on proof of a particular level of disability, a proof that is absent under the facts of this case.

As the foregoing discussion reveals, Mr. Hartman's claim that unless La. R.S. 23:1221(4)(p) is interpreted to provide indemnity benefits for his cumulative hearing loss, the *quid pro quo* that is at the core of the LWCA will be abrogated, and he will be unconstitutionally deprived of a remedy at law, is without merit. As we recognized in **Arrant**, the initial core compromise that is the *quid pro quo* has

evolved over the years and has been modified by the legislature, which has the prerogative to define the conditions and limitations under which workers can recover compensation benefits. **Arrant**, 13-2878 at 9, 169 So.3d at 302. While the employer's mandate to pay compensation is firm, it is not absolute, but limited to the employee's ability to meet the conditions imposed by the legislature for the receipt of benefits.

In the case of indemnity benefits for occupational hearing loss, through the enactment of La. R.S. 23:1221(4)(p), the legislature has drawn a distinction between cases in which a single exposure to noise (such as an explosion) causes immediate trauma in employees exposed to it, and those in which the hearing loss is gradual and cumulative, caused by repeated exposures. This distinction is not arbitrary; nor does it deprive an employee suffering from noise-induced hearing loss of due process or equal protection of the law. Rather, it reflects a policy decision that is uniquely the province of the legislature to make.

Heeding the legislature's directive that workers' compensation statutes be interpreted in accordance with the basic rules of statutory construction, and that it is the responsibility of the legislature–and not this court–to liberalize, broaden or narrow these statutes,[5] we decline the invitation to expand the scope of La. R.S. 23:1221(4)(p) to apply to permanent hearing loss due to a series of single traumatic accidents; *i.e.*, to cumulative hearing loss sustained over years of exposure to hazardous levels of noise. Applying instead the clear and unambiguous words of the statute, we find that the medical evidence in this case establishes that Mr. Hartman's hearing loss did not result solely from a single traumatic accident and, thus, he is not entitled to permanent partial disability benefits pursuant to La. R.S. 23:1221(4)(p).

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[5] La. R.S. 23:1020.1(D)(2) and (3).

CONCLUSION

For the foregoing reasons, the decision of the court of appeal is affirmed.

AFFIRMED.

03/24/21

SUPREME COURT OF LOUISIANA

No. 2020-C-0693

JAMES J. HARTMAN, JR.

VERSUS

ST. BERNARD PARISH FIRE DEPARTMENT & FARA

On Writ of Certiorari to the Court of Appeal, Fourth Circuit,
Office of Worker's Compensation, District 7

Hughes, J., additionally concurring.

Because Mr. Hartman did not miss any work or pay and has received medical benefits, I concur in the result reached in this case.

However, further erosion of workers compensation claimants' remedies may well upset the *quid pro quo* of workers compensation, unconstitutionally deprive the injured worker a remedy at law, and lead to tort liability on the part of the employer.

03/24/21

SUPREME COURT OF LOUISIANA

No. 2020-C-00693

JAMES J. HARTMAN, JR.

VS.

ST. BERNARD PARISH FIRE DEPARTMENT & FARA

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, FOURTH CIRCUIT, OFFICE OF WORKERS' COMPENSATION, DISTRICT 7

Crichton, J., additionally concurs and assigns reasons.

The Legislature has the prerogative to define the conditions and limitations under which workers can receive benefits. *Arrant v. Graphic Packaging, Intern. Inc.*, 13-2878, p.9 (La. 5/5/15), 169 So. 3d 296, 302. It is not for this Court to expand those conditions. Notably, this claimant is not left without any financial assistance. As the majority opinion points out, and as claimant himself stipulated at trial, the Fire Department currently provides him with medical benefits for his hearing loss. It is simply that the legislature has barred him from recovering under R.S. 23:1221(4)(p)—a decision that is within the legislature's domain. As I have previously observed, though the result may be unfortunate for this claimant, we must follow the legislature's plain directive in this matter, and I agree with the majority opinion. *See*, *e.g.*, *Griggs v. Bounce N'Around Inflatables, LLC*, 18-0726 (La. 1/30/19), 281 So. 3d 628 (Crichton, J., additionally concurring) ("[O]ur result today is necessary in light of the plain language of the statute. . .").

03/24/21

SUPREME COURT OF LOUISIANA

No. 2020-C-00693

JAMES J. HARTMAN, JR.

VS.

ST. BERNARD PARISH FIRE DEPARTMENT & FARA

On Writ of Certiorari to the Court of Appeal, Fourth Circuit, Office of Workers' Compensation, District 7

Genovese, J., additionally concurs and assigns the following reasons.

I fully concur with the reasons assigned by Justice Crichton. Additionally, I write not only to acknowledge the unfortunate correctness of this decision, but also to emphasize that the law is the law, and it is neither our prerogative nor our role to change that law or otherwise legislate from the bench. However, workers' compensation indemnity benefits in this case should not be restricted to a single traumatic event.

I fail to follow the rationale, nor do I find it justified, that in today's workplace, workers' compensation indemnity benefits for hearing loss may only be awarded to a worker exposed to a single traumatic accident and not for injuries that occur over time. In this case, the worker's proven cumulative hearing loss was attributed to required, on-the-job exposure to excessive levels of noise over an extended period of work time. In my view, on-the-job hearing loss is hearing loss, whether caused by a single traumatic event or over an extended period of time; and it should not be restricted to a single traumatic event. Hopefully, the legislature will address and correct this inequity.

03/24/21

SUPREME COURT OF LOUISIANA

No. 2020-C-00693

JAMES J. HARTMAN, JR.

VS.

ST. BERNARD PARISH FIRE DEPARTMENT & FARA

On Writ of Certiorari to the Court of Appeal, Fourth Circuit, Office of Workers' Compensation, District 7

GRIFFIN, J., additionally concurs and assigns reasons.

I write separately to note that our decision today does not overrule that portion of *Arrant v. Graphic Packaging Intern., Inc.*, which held noise induced hearing loss to be an occupational illness. 13-2878, pp. 21-22 (La. 5/5/15), 169 So.3d 296, 309-10. Despite Mr. Hartman's ability to recover medical expenses under La. R.S. 23:1203, the potential lack of a remedy in tort tests the limits of the *quid pro quo* bargain at the heart of the Louisiana Workers' Compensation Act. *See O'Regan v. Preferred Enterprises, Inc.*, 98-1602, p. 18 (La. 3/17/00), 758 So.2d 124, 136. Nonetheless, it remains the prerogative of the legislature to correct any gap in the law as to Mr. Hartman's available remedies absent constitutional infirmity. *See Kelly v. State Farm Fire & Cas. Co.*, 14-1921, p. 20 (La. 5/5/15), 169 So.3d 328, 340; *Krielow v. Louisiana Dept. of Agriculture and Forestry*, 13-1106, p. 4 (La. 10/15/13), 125 So.3d 384, 388.