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Legal Aspects of Hearing Loss Claims

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Types of Claims

- Accidental Hearing Loss
- Occupational Hearing Loss

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Basis of Claim

Single Event (“Accident”)

- Gunshot, head injury

Long-term Exposure (“Disease”)

- By statute, the exposure must persist for at least 90 days. Wis. Stat. § 102.555(7).
- Factory noise, lab environment

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Permanent Disability

Accidental Hearing Loss

- Bilateral: 330 weeks
- Unilateral: 55 weeks

Occupational Hearing Loss

- Bilateral: 216 weeks
- Unilateral: 36 weeks

Why a difference?



Tinnitus

Definition: perception of noise or ringing in the ears

Accidental Hearing Loss

- Permanent tinnitus = Five percent impairment of the affected ear(s).

Occupational Hearing Loss

- No compensation for tinnitus (for dates of injury after 1/1/92)

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Causation

Same Legal Standard: whether the exposure was at least a material contributory causative factor in the onset or progression of the loss.

Time-Weighted Average of 90 dB or more is presumed to be harmful



Date of Injury

Accidental Hearing Loss

- Date of event

Occupational Hearing Loss

- At the option of the employee: (1) transfer to non-noisy work, (2) last day of actual work, (3) termination, or (4) layoff of at least six months.
- Not the date when hearing loss becomes disabling

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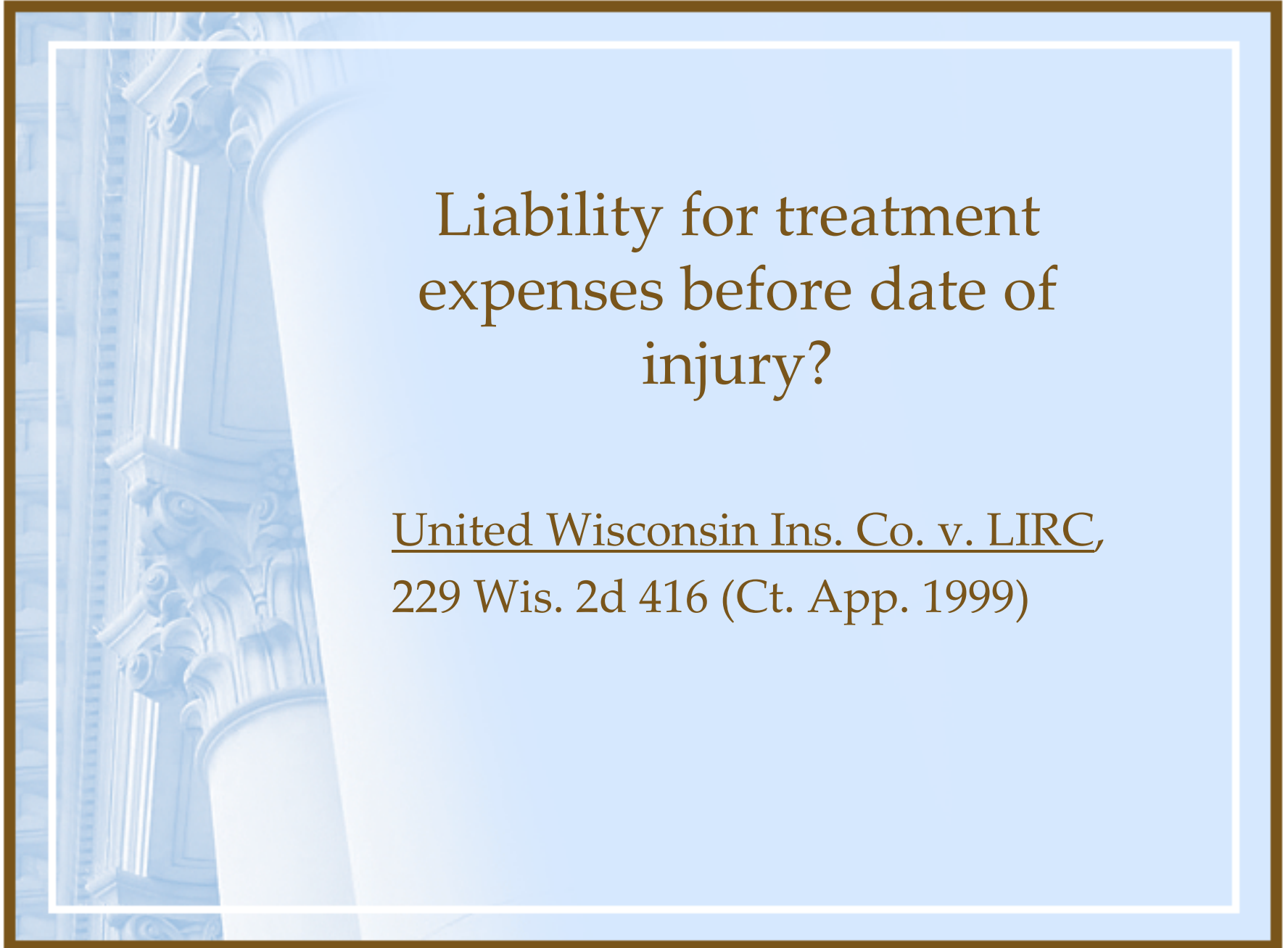
Permanent Disability

- No disability unless hearing loss exceeds 30 dB on average over 500, 1,000, 2,000, and 3,000 Hz.
- Calculation: it's complicated!

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Compensable Treatment

- Hearing aids, batteries, repairs, office visits, audiograms
- No compensation for treatment unless hearing loss is disabling (for dates of injury after 4/1/08)

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Liability for treatment expenses before date of injury?

United Wisconsin Ins. Co. v. LIRC,
229 Wis. 2d 416 (Ct. App. 1999)

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Special Considerations

Notice

- 30 days
- Must show misled by lack of notice

Laches

- 2 years, unless employer knew or should have known nature of injury and relation to work

Exposure to harmful noise?

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Statute of Limitations

Accidental Hearing Loss: 6 years

Occupational Hearing Loss: None

- Work Injury Supplemental Benefit has liability for compensation becoming due 12 years after date of injury or last payment for disability

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Investigation

Noise Studies

Hearing Protection

Hearing Tests

- Pre- or post-employment
- Asymmetrical loss
- Subsequent loss

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Other Factors

- Age
- Non-Occupational Noise
- Genetics/Family History
- Medical Conditions
- Medications

Thank You!

