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No Pain, No Claim? Court of Appeals Applies Three-Year Statute of Limitations to Bar Product Liability Suit, Despite Claim of Injury Four Years After Product Use

By Drew Broaddus

In *Smith v Stryker Corp*, the Michigan Court of Appeals has recently decided when a cause of action "accrues" in a product liability suit for purposes of the statute of limitations.

As far as statutes go, Michigan's catch-all statute of limitations for personal injury claims (which has been held applicable to products liability claims) is rather simple. MCL 600.5805(10) states: "The period of limitations is 3 years after the time of the death or injury for all other actions to recover damages for the death of a person, or for injury to a person or property." Similarly short and to-the-point is MCL 600.5827, which states that "the period of limitations runs from the time the claim accrues. The claim accrues … at the time the wrong upon which the claim is based was done regardless of the time when damage results." Nonetheless, these provisions have created quite a bit of controversy over the years, particularly over when a cause of action "accrues." Much of this controversy was resolved by *Trentadue v Gorton,* 479 Mich 378 (2007). In *Trentadue*, the Michigan Supreme Court abrogated the common-law discovery rule, which had delayed the accrual date in cases where the plaintiffs did not "discover" their cause of action within the statutory period.

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Smith v Stryker Corp. **reaffirms that MCL 600.5827 is to be applied as written, and potential claimants cannot wait for their damages to "ripen." This is consistent with the Supreme Court's holding in *Moll v Abbott Laboratories*, 444 Mich 1 (1993), that a cause of action accrues when the plaintiff knows *or should have known* of a *possible* cause of action. The clock starts ticking once the plaintiff suspects potential wrongdoing.**

Smith v Stryker Corp. **also confirms that plaintiffs may be able to revive stale claims through "fraudulent concealment" (MCL 600.5855) in only the most extreme cases. This is consistent with the general rule in Michigan that fraud can never be presumed, and must be proven by clear, satisfactory and convincing evidence. *Cooper v Auto Club Insurance Association,* 481 Mich 399 (2008).**

Smith involved products liability and negligence claims. Plaintiff Smith alleged that she was injured when she used a "pain pump" that was manufactured and sold by Defendants. A pain pump is designed to deliver medication at a pre-set rate directly to a surgical wound site, or in close proximity to the nerves associated with the surgical area, for post-operative pain management. Plaintiff alleged that the pump gradually made her condition worse, making a second surgery necessary to repair damage allegedly done by the pump.

Plaintiff used the product in 2003, but did not file her lawsuit until 2009. Defendants filed a motion for summary disposition, arguing that the lawsuit was barred by the statute of limitations. Plaintiff opposed the motion, asserting that her claim did not accrue "until the injury progressed to total destruction in November 2007." The trial court granted Defendants' motion, and the Court of Appeals affirmed.

The Court of Appeals reasoned that, because Plaintiff used the pain pump in 2003, that was when the "wrong occurred" for the purposes of § 5827. As to Plaintiff's assertion that no damages manifested until 2007 (when she required replacement surgery), the Court held that this "is not the correct date to utilize for purposes of the statute of limitations. The date that damage results is not the appropriate standard."

Plaintiff also alleged that Defendants fraudulently concealed the fact that the device allegedly was not approved for use "in the joint space." Plaintiff relied upon MCL 600.5855. This statute provides that, when a defendant has fraudulently concealed the existence of a claim, the action may be commenced within two years after the person discovers, or should have discovered, the claim. However, in order to invoke this provision, the plaintiff must present evidence of fraud. Plaintiff was unable to do so.

Finally, Plaintiff argued that *Trentadue* was incorrectly applied by the trial court because (1) *Trentadue* does not apply to product liability cases, and (2) *Trentadue* was wrongly decided. The Court of Appeals rejected both arguments in short order as follows: "In *Trentadue*, our Supreme Court held that an extrastatutory discovery rule could not apply to toll or delay the time of accrual of a plaintiff's claim. Rather, the Legislature had to expressly carve out an exception in the language of the statute. … Plaintiffs fail to identify statutory language that creates an exception for products liability cases. Plaintiffs' contention that *Trentadue* was wrongly decided must be directed to our Supreme Court. We are bound by *stare decisis* to follow the decisions of our Supreme Court."

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