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Supreme Court Abrogates Common Law Discovery Rule

By Michael L. Updike

In *Trentadue v Buckler Automatic Law Sprinkler Company*, 4__ Mich __; 7__ NW2d __ (Nos. 128579, 128623, 128624 and 128625, rel'd 7/25/07), the Michigan Supreme Court overruled four decades of precedent and abrogated the common law rule of discovery.

The common law rule of discovery delayed the running of the statute of limitations for a cause of action from the time the plaintiff either discovered, or through the exercise of reasonable diligence, should have discovered he or she had a cause of action against another. The rule was first articulated in *Johnson v Caldwell*, 371 Mich 368; 123 NW2d 785 (1963).

The majority opinion of the Supreme Court, authored by Justice Corrigan and joined by Chief Justice Taylor and Justices Young and Markman, held that the plain and unambiguous language of MCL § 600.5827 means that a statute of limitations begins to run from the time a claim accrues, which the Supreme Court takes to mean when all the elements necessary to plead a cause of action have occurred. In the typical instance, this means when the plaintiff has been injured or damaged, even if he or she does not know what caused the injury or damage.

In some instances, such as in medical malpractice, the Legislature has established separate laws that provide for a statutory "discovery rule". In those instances, the statute of limitations is tolled until the plaintiff knows or should have known through the exercise of reasonable diligence that he or she has a cause of action against another. If there is no statutory discovery rule applicable to a cause of action, however, there is no tolling and the statute of limitations begins to run from

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The retroactivity of the *Trentadue* decision should cause counsel and claim representatives to take a careful look at all cases where the "discovery rule" is alleged to have tolled the statute of limitations. In some instances, the plaintiff was relying on a statutory discovery rule and the statute of limitations was legitimately tolled, but in many others the plaintiff may have been relying on the now-abrogated common law discovery rule. That, in turn, may mean that the plaintiff's cause of action is subject to dismissal on the basis of the applicable statute of limitations.

Any case where the time between the injury causing or damage producing event and the filing of the lawsuit is more than the statute of limitations for the cause of action (in the typical Michigan personal injury or property damage case, the statute of limitations is 3 years) should be carefully examined to see if it is time-barred. Similarly, counsel should be very careful about waiving a statute of limitations defense, or failing to list it as an affirmative defense in the defendant's first responsive pleadings.

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the date of injury or damage.

The majority did note that there was “essentially unlimited tolling” of a statute of limitations where a defendant had fraudulently concealed a cause of action from a plaintiff, pursuant to MCL § 600.5855.

The majority specifically overruled what was arguably the leading case on the common law discovery rule, *Chase v Sabin*, 445 Mich 190; 516 NW2d 60 (1994), and made its decision in *Trentadue* retroactive.

There were vigorous dissents from Justice Weaver, joined by Justice Cavanagh, and by Justice Kelly.

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