

Statute of Limitations Discovery Rule Abrogated in Michigan

The Michigan Supreme Court issued on July 25, 2007 a ruling that continues its strict construction philosophy and which may eliminate the discovery rule exception to the statute of limitations defense in all but a few types of tort claims. This decision will likely have a significant impact on many claims, especially toxic tort claims, and in particular asbestos claims.

On a 4-3 vote, the Court in *Trentadue v Gorton*, 479 Mich 378, 738 NW2d 664 (2007), dismissed a wrongful death claim brought by the family of a rape and murder victim where the rape occurred in November 1986 and suit was filed in 2002. The Plaintiff claimed that the identity of the perpetrator, and thus his employer and the nature of their negligence, could not have been known until DNA evidence established the identity of the rapist and killer in 2002.

The Court ruled that the plain language of the applicable statute of limitations MCLA 600.5805(10) and accrual provision, MCLA 600.5829 does not include a discovery rule, and the statute begins to run when the wrong is committed and the decedent was harmed. The majority held that the statutes of limitations abrogated common law in the area and overruled prior inconsistent precedent applying a common law discovery rule. The discovery rule continues

to apply where specifically established by statute such as for professional liability and medical malpractice cases under MCLA 600.5838(2) and certain claims for damages arising out of improvements to real property MCLA 600.5839(1).

This ruling will likely preclude some latent injury or damage claims including toxic tort and asbestos claims, where the evidence shows exposure and injury or illness occurred more than three years prior to suit notwithstanding later diagnosis and discovery by the Plaintiffs. Plaintiffs will likely try to equate diagnosis or discovery with the injury to avoid the impact of this decision.

It may be necessary for Defendants to establish via expert testimony the date of onset of the illness or disease. Trial Courts may ultimately find fact questions as to the onset date requiring evidentiary hearings.

Provizer & Phillips, P.C., handles complex litigation including toxic tort, environmental, construction defect, professional liability and insurance coverage litigation. If you have any questions or need assistance, please contact Randall E. Phillips, 30200 Telegraph Road, Suite 200, Bingham Farms, Michigan 48025, (248) 642-0444; rphillips@p-ppc.com or www.provizer-phillips.com.