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Does Extensive Media Coverage Of An Event Equal Notice For Purposes Of Computing The Statute Of Limitations? New Fourth District Court Of Appeal Decision Holds That It Does Not…

By: Edward F. Morrison, Jr., Esq.
Brett C. Drouet, Esq.
Christina S. Karayan, Esq.

In an important decision which may impact a variety of lawsuits, the California Fourth District Court of Appeal ruled in a decision handed down on April 23, 2008 that wide ranging media coverage of facts or circumstances or an event which might result in the basis for a potential lawsuit will not trigger the statute of limitations for any particular plaintiff unless the defendant can demonstrate that the plaintiff had a reasonable suspicion of the basis of a claim based on what that plaintiff was actually aware of.

The decision in question was issued in Unruh-Haxton v. The Regents of the University of California (2008) DJDAR 5802 (Westlaw 1810341) (the "Unruh-Haxton" case). The Unruh-Haxton case involved eight lawsuits brought by patients who received fertility treatments from two doctors in the late 1980s at a clinic in Garden Grove, California. In 1995, it was widely reported from several news sources that the two doctors had been selling human genetic material from patients receiving fertility treatments. The patients alleged in their complaints that they were unaware that they were potential victims until after 2000 and filed lawsuits within one year of allegedly discovering their claims. In each case, suit was filed more than ten years after the plaintiffs last received fertility treatments .

The defendants, which included the Regents of the University of California and Tenet Healthcare (the latter acquired the medical practice in which the two doctors had worked), filed demurrers on the basis that the actions were time barred under Code of Civil Procedure section 340.5. The trial court sustained the defendants' demurrers after taking judicial notice of approximately 100 news articles and press releases regarding the scandal involving the doctors. The trial court determined, as a matter of law, that the couples should have suspected wrongdoing, i.e., that they had "constructive suspicion", and could not claim facts that they had only become aware of their claims within one year of filing suit.

On appeal, the Court of Appeal reversed.

In its decision, the Court of Appeal acknowledged the "discovery rule" which postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action citing Norgart v. Upjohn Co. (1999) 21 Cal.4th 383, 397. The Court of Appeal further commented that the discovery rule focuses on "whether the plaintiffs have reason to at least suspect that a type of wrongdoing has injured them" and cited Fox v. Ethicon Endo-Surgery, Inc. (2005) 35 Cal.4th 797, 807 (basically, a "suspicion standard").

With this backdrop, the Court of Appeal discussed the recent decision in Nelson v. Indevus Pharmaceuticals, Inc. (2006) 142 Cal.App.4th 1202, 1206, a diet pill case involving Fen-phen, where the Court of Appeal ruled that the statute of limitations would not begin to run when the danger of the diet pill was publicized but instead would commence when the particular plaintiff had a "suspicion" of wrongdoing. The Court of Appeal also acknowledged another, prior decision, McKelvey v. Boeing North America, Inc. (1999) 74 Cal.App.4th 151, where the trial court had sustained demurrers based on statute of limitations involving claims that plaintiffs in a class action suit were injured after being exposed to contaminated soil and groundwater. As to that decision, the Court of Appeal noted that the state legislature subsequently modified Code of Civil Procedure section 340.8(c)(2) to provide that media coverage, by itself, will not result in placing a reasonable person on inquiry notice in cases involving mass torts arising from hazards or toxic substances and distinguished McKelvey by narrowly construing its facts in regard to media coverage in that case.

The Court of Appeal then reasoned that inquiry notice in the Unruh-Haxton case should be based on each individual plaintiff's knowledge and further ruled that the trial court erred in finding that the plaintiffs could not state facts that they had filed suit within one year of having a suspicion of their claims. The Court of Appeal further ruled that the trial court erred in taking judicial in the manner it did in sustaining the demurrers.

The Unruh-Haxton case presents a milestone of sorts for potential claimants. Going forward, wide ranging media coverage of facts and circumstances or an event will not, by itself, result in the trigger of the statute of limitations unless the defendant can demonstrate individual knowledge on the part of the plaintiff of facts demonstrating that the plaintiff had or should have had a "suspicion" of a claim. Given that, judicious defense counsel should well consider facts concerning how a plaintiff receives news, such as through newspaper subscriptions, television or electronic media.

About the Authors: Edward F. Morrison, Jr. is the founding partner, Brett C. Drouet is a partner and Christina S. Karayan is a senior associate of The Morrison Law Group, a professional corporation. Their biographies can be viewed at www.morrisonlawgroup.com.

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