Ohio Supreme Court Rules on Statute of Repose

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In a flurry of end-of-the-year decisions, the Supreme Court of Ohio handed the medical community a major victory when it decided Ruther v. Kaiser and reversed the decision of the Twelfth District Court of Appeals that, if followed, would have allowed medical malpractice claims to be brought decades after the alleged malpractice occurred.

The medical malpractice statute of repose
With some exceptions, the medical malpractice statute of repose, R.C. 2305.113(C), provides an outside time limit for potential liability. Distinct from the one-year statute of limitations for bringing a medical claim, the statute of repose operates to prevent plaintiffs from bringing medical malpractice claims based on underlying acts that occurred more than four years earlier. Claims made on behalf of minors and the mentally incompetent are excepted from the statute, as are claims based on alleged malpractice discovered between the third and fourth year after the alleged malpractice and those involving the discovery of foreign objects left in the body.

The appellate decision
The underlying case involved acts of alleged malpractice that occurred in the 1990s and allegedly caused a patient’s death in 2009. Ruther v. Kaiser, 12th Dist. No. CA2010-07-066, 2011-Ohio-1723. Timothy Ruther, while a patient of Dr. Kaiser, had lab work done in 1995, 1997, and 1998 that showed significantly elevated liver enzymes. Dr. Kaiser’s office did not notify Ruther of these results. In December 2008 — after he had stopped being treated by Dr. Kaiser — Ruther was diagnosed with hepatitis C and liver cancer. In the lawsuit against Dr. Kaiser that followed, Ruther alleged that it was not until the time of his 2008 diagnoses that he became aware of his abnormal lab tests from the 1990s. Ruther died approximately one month later, and his claim was continued by his wife.

Despite falling squarely within the four-year statute of repose, the trial court refused to apply the statute and instead found it unconstitutional as applied to Ruther’s medical claim. The Twelfth District Court of Appeals affirmed.

The Ohio Supreme Court reverses
The Supreme Court granted review and reversed. In doing so, it emphasized the due-course-of-law aspect of the right-to-remedy provision and made clear that this provision “does not prevent the General Assembly from defining a cause of action.” Ruther v. Kaiser, Slip Opinion No. 2012-Ohio-5686. The General Assembly had every right and authority then “to determine what causes of action the law will recognize,” and it could likewise “alter the common law by abolishing the action, by defining the action, or by placing a time limit after which an injury is no longer a legal injury.” If it did not have this authority, “medical providers are left with the possibility of unlimited liability indefinitely.”

The Court noted strong policy reasons for upholding the statute of repose as enacted: Just as a plaintiff is entitled to a meaningful time and opportunity to pursue a claim, a defendant is entitled to a reasonable time after which he or she can be assured that a defense will not have to be mounted for actions occurring years before.

But even though strong public policy supported the statute and the Court found unconstitutionality, the Court found the analysis in Hardy fatally flawed and “wrongly decided.”

In sum, it was a good day for the medical community when the Ohio Supreme Court decided Ruther v. Kaiser. Ohio is now in line with the majority of jurisdictions; 32 states have these statutes in existence.

Editor’s note: An amicus curiae expressing support for the appellate’s position in this case was filed by several medical associations and the Ohio Alliance for Civil Justice (OACJ) — the AMCNO is a longstanding member of the OACJ and supported the appellate position in this case.