

Statute of Limitation and Statute of Repose Expired? Not So Fast! A Medical Malpractice Claim May RELATE Back!

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In a matter of first impression, the Illinois Appellate Court in *Lawler v. University of Chicago Medical Center* had to determine whether Illinois' medical malpractice statute of repose bars applying the "relation back" doctrine to add a new claim under the Illinois Wrongful Death Act. The relation back doctrine allows an original, timely filed pleading to be amended any time before final judgment, as long as the amendment "relates back" to the original complaint. In *Lawler*, the appellate court decided to apply the doctrine—but now the Supreme Court of Illinois has decided it's time for a weigh-in.

Background

In August 2011, a medical malpractice cause of action was timely filed within Illinois' two-year statute of limitations and four-year statute of repose. The lawsuit concerned medical care given in July 2009.

In November 2013, the plaintiff died. By that point, the four-year statute of repose had expired. Nonetheless, in March 2014 the trial court allowed the decedent's daughter to file an amended complaint alleging, among other things, two counts based on wrongful death. The defendants then filed motions to dismiss contending the wrongful death claims were barred by Illinois' statute of repose. The trial court granted the motions, finding that because the wrongful death claims were added in the amended complaint more than four years after the date of the last medical treatment, they were indeed barred by the statute of repose.

The Appellate Court Has Its Say

After the decedent's daughter challenged the trial court's dismissal, the Illinois Appellate Court had a look at *Hayes v. Mercy Hospital*, in which the Supreme Court of Illinois concluded that the medical malpractice statute of repose, when applicable, bars any action seeking damages against a healthcare provider for injury or death

arising out of patient care. Nevertheless, the Lawler court determined Hayes was distinguishable because in Hayes the high court did not consider the relation back doctrine, and therefore did not have the opportunity to consider the issue presented in *Lawler*.

In considering the relation back doctrine, the appellate court highlighted *Zeh v. Wheeler*, in which the Supreme Court of Illinois held there is no reason to apply a statute of limitations when the opposing party has had notice from the outset that a plaintiff was trying to enforce a claim because of events that led up to death. Here, because the decedent had **already** filed a claim for medical negligence, the four-year statute of repose did not prevent the decedent's daughter from bringing a wrongful death claim for the same alleged malpractice—after all, the decedent could have maintained a claim herself if she hadn't died. Because the relation back doctrine is remedial in nature and is applied liberally to favor hearing a plaintiff's claim, the court refused to bar the merits from being heard due to technical rules of pleading, and preferred to place substance over form.

The High Court Steps In

On September 28, 2016, the Supreme Court of Illinois allowed an appeal of the *Lawler* decision. Will the high court hold that *Hayes* controls? Or will the *Lawler* decision stand—and if it does, how will it impact other statutes when the relation back doctrine comes into play? And if the decision stands, what happens to *Hayes*—would the high court then clarify or amend its holding in *Hayes* regarding suits for contribution, or address what could happen with the relation back doctrine in other scenarios? In light of the number of questions out there, the high court's decision to take the case is not surprising.

The Takeaway

Although this case did not involve legal malpractice, the sequence of events illustrates how unexpected developments can affect the prosecution or defense of a claim, and how issues and questions regarding timing can arise long after claims are first filed. In *Lawler*, both sides made their best arguments when opportunities arose, so much so that the high court now needs to examine the matter and have the final say.

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