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BULLETIN



SEPTEMBER 4, 2009

Pharmaceutical & Medical Device

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**MINNESOTA SUPREME COURT RULING
ON LIMITATIONS ISSUE BREATHES LIFE
INTO NON-RESIDENTS' STALE CLAIMS**

The Minnesota Supreme Court held Thursday that the state's 6-year statute of limitations would continue to apply to cases filed in Minnesota by non-residents whose causes of action accrued before August 1, 2004. The ruling in *Fleeger v. Wyeth et al.* means that, in some instances, non-Minnesota plaintiffs with otherwise time-barred claims can continue to seek refuge under the state's generous limitations period.

In 2007, Pennsylvania resident Rachel Fleeger sued Wyeth, Wyeth Pharmaceuticals and Greenstone Ltd. in the U.S. District Court for the District of Minnesota. Fleeger alleged that she developed breast cancer after taking defendants' hormone therapy medications. She lived in Pennsylvania when she took the medications, and she was diagnosed and treated in Pennsylvania. None of the named defendants was a Minnesota citizen.

The Judicial Panel on Multidistrict Litigation transferred the case to the U.S. District Court for the Eastern District of Arkansas (the MDL court), along with more than 4,000 other cases filed in Minnesota by non-residents. Defendants in *Fleeger* moved for summary judgment on the basis of Pennsylvania's 2-year statute of limitations, and the MDL court certified to the Minnesota Supreme Court a question of law regarding the application of its statute of limitations.

Deciding that Fleeger's case was subject to Minnesota's 6-year statute of limitations rather than Pennsylvania's 2-year limitations period, the court addressed two key issues.

First, the court held that, under Minnesota law, statutes of limitations are procedural rather than substantive. "The common law in Minnesota is clear. When directly faced with the issue, we have considered statutes of limitations to be procedural without exception." As such, Minnesota common law dictated that the law of the forum state—Minnesota, in this case—was applicable to Fleeger's case, even though it had no connection to the state.

Second, the court rejected the argument that it—like many other courts—should change its common-law reliance on *lex fori*. The court noted that, in 2004, the

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Minnesota legislature enacted a new borrowing statute for all “claims arising from incidents occurring on or after August 1, 2004.” Although the new statute would not apply to Fleeger’s case (the parties agreed for purposes of the certified question that the claim arose in 2002), it would have the effect of applying Pennsylvania’s statute of limitations in any similar case accruing after the effective date.

According to the court, “A prospective change in the common law would apply only to cases commenced between the date of this decision and August 1, 2010. And a retroactive change would only affect cases that arose before August 1, 2004, which have not yet been finally resolved.” The court emphasized the importance of the rule of stare decisis before concluding that “[s]uch a limited effect” does not “present the compelling reason necessary to overrule our precedent.” ■