



Alerts

Discovery Rule Permits Accrual of Survival and Wrongful Death Claims After Decedent's Death

July 1, 2015

On June 23, 2015, the Wisconsin Supreme Court held that the discovery rule permits both survival and wrongful death claims to accrue after the decedent's death. *Christ v. Exxon Mobil Corp.*, 2012AP1493 (Wis. June 23, 2015).

In *Christ*, a group of workers previously employed at an Eau Claire tire manufacturing facility sued Exxon Mobil and several other companies. The workers alleged that they were exposed to benzene, and, as a result, they were injured and some died. Later, the defendants moved for dismissal of several plaintiffs' complaints. The defendants argued that the plaintiffs' claims were untimely because Wisconsin Statutes Section 893.54 barred recovery for survival and wrongful death claims filed more than three years after accrual, and that the claims could not accrue after the decedents' deaths. The circuit court concluded the claims accrued at death and were barred.

In reaching its decision, the Wisconsin Supreme Court explained that unless the legislature has superseded the discovery rule for a particular tort, the rule must apply to claims for that tort in a way that protects the public policy reasons behind the discovery rule. The court reasoned that there were no policy reasons requiring the wrongful death or survival claims to accrue before or upon death that outweigh those permitting accrual upon reasonable discovery after death. The court cautioned that, because the discovery rule was based on public policy, the rule's application may be weighed against competing public policy considerations.

For more information, please contact [Tomislav Z. Kuzmanovic](#), [Craig T. Liljestrand](#) or your regular [Hinshaw attorney](#).

Attorneys

[Tomislav Z. Kuzmanovic](#)

[Craig T. Liljestrand](#)