

## COURT WATCH

FROM THE OFFICES OF FLAHERTY, SENSABAUGH & BONASSO, PLLC.

June 7, 2007

*Worley v. Beckley Mechanical, Inc.*, Appeal No. 33190

Appeal from the Circuit Court of Raleigh County to the West Virginia Supreme Court of Appeals

**TOPIC: Whether a mental illness occurring after the statute of limitations begins to run will stop the running of the statute?**

On March 19, 2007, the West Virginia Supreme Court of Appeals rendered a decision in *Worley v. Beckley Mechanical, Inc.* In *Worley*, the plaintiff was injured on May 28, 2000, while working on a construction project. The plaintiff was taken to the hospital, but did not suffer any brain trauma. Several days later, the plaintiff developed sepsis, becoming seriously ill and losing his level of mental functioning.

On July 10, 2002, the plaintiffs filed suit against the defendants, alleging various theories of liability. The defendants asserted that the plaintiffs had not filed their suit within the two year statute of limitations, which would have expired on May 28, 2002. The Circuit Court agreed with the defendants and found that the plaintiffs' claims were blocked by the statute of limitations.

The plaintiffs appealed the Circuit Court's decision, alleging that the plaintiff was mentally ill during his hospital stay and, therefore, was "insane" and did not have the mental capacity to file suit during this period. The plaintiffs further alleged that the plaintiff's insanity would toll or stop the running of the statute of limitations. The defendants argued that the statute of limitations only stops running for those individuals who were insane at the time the cause of action accrues.

West Virginia Code § 55-2-15 provides:

If any person to whom the right accrues to bring any such personal action, suit . . . shall be, at the time the same accrues, an infant or insane, the same may be brought within the like number of years after his becoming of full age or sane that is allowed to a person having no such impediment to bring the same after the right accrues[.]

(emphasis added). The West Virginia Supreme Court of Appeals stated that according to the plain meaning of § 55-2-15, the person must have been mentally ill when he or she was injured or must have become mentally ill simultaneously with the injury, in order to toll the statute of limitations. However, the Court concluded that the plain or literal application of § 55-2-15 produced a result that was demonstrably at odds with the intentions of this statute. The Court stated that the general purpose of § 55-2-15 is to toll the running of the statute of limitations so that the legal rights of the mentally ill may be protected. Moreover, the Court found that the purpose of the statute would be frustrated if the statute was read to protect only those people who were mentally ill at the time of

injury. Thus, the Court held that in order for mental illness<sup>1</sup> to delay the running of the statute of limitations, the plaintiff must show that the interval between the tortious act and the resulting mental illness was so brief that the plaintiff, acting with diligence, could not reasonably have taken steps to enforce his or her legal rights during such interval. The Court remanded the case to the Circuit Court for a determination of when the plaintiff regained mental function.

While *Worley* dealt with claims of general negligence, the Supreme Court's holding will also apply to the two year statute of limitations set forth in § 55-7B-4 of the Medical Professional Liability Act. Therefore, any patient who has lost mental capacity during the running of the statute of limitations will potentially have additional time to file his or her medical malpractice claim.

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<sup>1</sup> Because an "insane" person under W.Va. Code § 55-2-15 means the same as a mentally ill person, as provided for in W.Va. Code § 2-2-10(n), the court substituted the term "mentally ill" for "insane" in the opinion.