

## GIVE YOURSELF A CHANCE

Recent pronouncements from Ohio courts pertaining to Ohio Civil Rule 15(C) should make it clear to the plaintiff's injury practitioner that amending a complaint after the statute of limitations has expired can be fraught with pitfalls.

Generally speaking, a claim for bodily injuries from an automobile accident must be filed within two years from the date of the accident. However, if there is any question as to the identity of the responsible defendant, it is not advisable to wait the full two years before filing. Recent court pronouncements on "relation back" make it clear that the plaintiff's injury practitioner may not be able to successfully amend a complaint after the two year deadline has expired.

Ohio Civil Rule 15(C) provides that if plaintiff files an amended complaint, the amendment "relates back" to the date of the original pleading, if the amendment contains a claim or defense asserted in the original pleading and arose out of the conduct, transaction or occurrence set forth in the original pleading. Thus, in certain circumstances, plaintiff's counsel can file an amended complaint after the two-year statute of limitation has expired, and successfully argue that under Civil Rule 15(C), the date of the filing of the amended complaint "relates back" to the date the original complaint was filed. But, there is a distinct danger in this approach. If discovery reveals that the wrong defendant was named in the original complaint or an additional defendant needs to be added, the filing of amended complaint to correct this oversight will, most likely, not "relate back" under Civil Rule 15(C) and, therefore, the amended claim will be barred by the statute of limitations. In *Kooyman v. Staffco Construction, Inc.* (2010), 189 Ohio App. 3d 48, the plaintiff was killed when operating a motorcycle in a public park. Plaintiff filed suit against the Metropolitan Park District within the filing deadline for instituting an action. The discovery process revealed that the proper defendant should be a municipality. The plaintiff filed an amended complaint, naming the municipality as a defendant. The amended complaint was filed after the statute of limitations had expired, but plaintiff argued that the case should not be dismissed under a statute of limitations defense, because the amended complaint should relate back under Civil Rule 15(C). The *Kooyman* court found this argument to be unpersuasive, and held that 15(C) would not salvage the claim for two reasons. First, the court noted that the Relation Back Doctrine under Rule 15(C) only applies to fixing clerical mistakes such as the misspelling of a defendant's name. Secondly, Rule 15(C) does not allow a plaintiff to add an additional party. It merely allows the plaintiff to substitute a party.

The lesson . . . file suit well before the two year deadline to allow sufficient time to conduct discovery and, if necessary, add defendants or change defendants before the statute of limitations runs.

At Thomas J. Diehl & Co., LLC, we have been handling personal injury claims in Southwest Ohio since 1988. We regularly work with counsel in ethical fee sharing arrangements. Thomas J. Diehl has been selected as a Fellow of the Litigation Counsel of America and granted membership in the Million Dollar Advocates Forum.