



News & Updates

STATUTE OF LIMITATION IN WRONGFUL DEATH ACTION HELD TO HAVE COMMENCED AT TIME OF DECEDENT'S DIAGNOSIS

The administratrix of the decedent's estate appealed the lower court's time-barred dismissal of the wrongful death action she commenced on behalf of the decedent, who was diagnosed with mesothelioma on June 17, 2011 and died on July 9, 2012. The action was commenced on January 9, 2014, which was more than two years after the mesothelioma diagnosis, but less than two years after the decedent's death.

The court, in its analysis of the subject Pennsylvania statute of limitations, found that the time to file an action began to run at the time of the decedent's diagnosis, as opposed to her death, and held: "With respect to asbestos-related wrongful death actions, the passage of 42 Pa.C.S. § 5524(8) changed prior law. Before the enactment of § 5524(8), asbestos-related wrongful death actions were treated no differently than any other wrongful death claims; the statute of limitations on wrongful death claims commenced to run when the action accrued upon the death of the decedent. For non-asbestos-related wrongful death claims, that remains the law. However, in enacting 42 Pa.C.S. § 5524(8), the legislature provided that, in all actions for injury or death related to asbestos specifically, the two-year statute of limitations would commence to run either when the afflicted person was formally diagnosed with asbestos-related disease, or, with reasonable diligence, should have been diagnosed. No exception was made for wrongful death actions."

The court did acknowledge that some of the consequences of designating the date of diagnosis as the commencement of the running of the statute of limitations may appear harsh and even admitted that some asbestos wrongful death actions may be time-barred before they can be instituted. However, the court reiterated that the subject statute was unambiguous and stated that "it is the prerogative of the legislature to set limitations on actions."

Read the full decision [here](#).

If you have questions about how this case may impact your business, please contact:

Joseph J. Welter (716.566.5457; jwelter@goldbergsegalla.com)
Jason A. Botticelli (716.566.5460; jbotticelli@goldbergsegalla.com)
Or another member of Goldberg Segalla's Toxic Torts Practice Groups

Files

[Asbestos Alert - Superior Court PA - 3-20-15.pdf](#)

Attorney Advertising © 2018 Goldberg Segalla
Prior results do not guarantee a similar outcome.

- New York
- Chicago
- Los Angeles
- Orlando
- West Palm Beach
- St. Louis
- Philadelphia
- Miami
- Baltimore
- Newark

- Garden City
- Hartford
- Princeton
- Greensboro
- Buffalo
- Rochester
- Syracuse
- Albany
- White Plains
- London