



Court of Appeals Holds That a Deficient Notice of Intent May be Amended, Even if the Notice was Mailed Before the 2004 Amendment to the Notice Statute

Richard C. Kraus

Foster Swift Medical Malpractice E-News

September 10, 2010

PRACTICE AREAS

Medical / Professional Malpractice
Defense

In an unpublished opinion, the Court of Appeals held that a deficient notice of intent, filed before the 2004 amendment of MCL 600.5856, may be amended. After amendment, the notice relates back to the original mailing date and tolls the statute of limitations. *Johnson v Hurley Medical Group, PC*, unpublished opinion per curiam of the Court of Appeals, issued August 12, 2010 (Docket No. 287587)

In two cases, the Supreme Court held that a notice of intent that failed to comply with all requirements of MCL 600.2912b(4) did not toll the statute of limitations under MCL 600.5856, as originally enacted. *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57; 642 NW2d 663 (2002), and *Boodt v Borgess Med Center*, 481 Mich 558; 751 NW2d 44 (2008). Under these cases, a plaintiff was not allowed to amend the notice to cure the deficiencies. If the statute of limitations expired during the mandatory waiting period required before filing suit, the malpractice claim was barred.

After the notice of intent statute was amended in 2004, the Supreme Court held that the amended provision required a different result. *Bush v Shabahang*, 484 Mich 156; 772 NW2d 272 (2009). For notices mailed after the amendment, *Bush* held that deficiencies in notices mailed after the effective date of the 2004 amendment could be cured through amendment or disregarded in the interests of justice under MCL 600.2301.

Johnson involved a deficient notice mailed before the 2004 amendment. The panel concluded that *Bush* effectively overruled *Roberts* and *Boodt* and held that the deficient notice could be amended under MCL 600.2301. The panel held that an amended notice, if it complies with the statutory requirements, will relate back to the original mailing date, so that the plaintiff is entitled to the benefit of the 182-day tolling period.



Johnson is an unpublished opinion and is not binding precedent on trial courts or other panels of the Court of Appeals.
