



**JE
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Alabama Medical Malpractice Decisions

2016 YEAR IN REVIEW



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Application of the AMLA Statute of Repose

Cutler v. University of Alabama Health Services Foundation, 2016 WL 3654760 (Ala.)

Here, the Supreme Court of Alabama applied the four-year statute of repose included in the Alabama Medical Liability Act. By way of background, the act provides that all medical malpractice actions must be commenced within two years after the act or omission at issue though, if the cause of action was not, and could not, have been reasonably discovered within that period, the action may be commenced within six months from the date of the discovery or discovery of facts which would have reasonably led to such discovery. However, the AMLA further provides that “in no event may the action be commenced more than four years after such act.”

Cutler alleged that a treating neurologist failed to inform him of a 2-centimeter tumor or lesion in the right frontal region of his brain which was discovered by an MRI study performed on June 28, 2005, following a motorcycle accident. According to the Complaint, following a single-vehicle accident on February 11, 2015, Cutler learned, by way of another MRI study, that the accident was likely the result of a seizure caused by a large frontal brain lesion. He further asserted that this was the same lesion seen in the June 28, 2005 study, though it had grown much larger though was not symptomatic until the February 11, 2015 event.

Generally, under Alabama law in the medical malpractice context the legal injury occurs at the time of the alleged negligent act or omission. Cutler argued, consistent with prior Alabama decisions addressing the AMLA limitation period, that when negligent act and the resulting harm do not coincide, the accrual date of the cause of action is the latter. The appellate court affirmed the trial court’s dismissal of Cutler’s claims and rejected Cutler’s argument since Cutler’s Complaint included a specific allegation that the tumor or lesion began its adverse growth process within the four years following June 28, 2005, and, therefore, the statute of repose ran on June 28, 2009. Key was a finding that the dismissal was based upon allegations included in Cutler’s own Complaint establishing that the injury occurred prior to expiration of the statute of repose despite Cutler’s additional argument that the legal injury could not have manifested itself until he suffered actual harm.

Commencement of a Medical Malpractice Action for Statute of Limitations Purposes

ENT Associates of Alabama, P.A. v. Hoke, 2016 Ala. LEXIS 98

Again addressing the application of Alabama’s medical malpractice statute of limitations, the Supreme Court of Alabama, in a permissive appeal, found that the plaintiff had failed to timely “commence” her medical malpractice action because there was no proof of a bona fide intent to serve the defendants at the time the Complaint was filed.

The Complaint was electronically filed the day before the two-year statute of limitations ran. The document was signed by an out-of-state lawyer who was not licensed to practice in Alabama though the Complaint noted that his “motion pro hac vice [was] to follow.” The electronic filing was made by an Alabama attorney whose name did not appear on the Complaint. The court did not address the conspicuous question of whether the filing, made by a foreign attorney and not signed by an Alabama attorney, was a nullity. Instead, the focus was on the failure of counsel to effect service.

Specifically, at the time the Complaint was filed Hoke elected to use a process server. However, in response to the defendants’ dismissal motions, no evidence was presented establishing the steps taken by either attorney to effectuate service on the defendants by means of a process server. In finding such, the court noted that there was no evidence why the Alabama attorney made no effort to execute service and, therefore, found that the only explanation for the delay was the out-of-state attorney’s intentional postponement until his application for admission pro hac vice was submitted. Thus, the court found that the plaintiff, acting through her attorneys, did not have a bona fide intent to immediately serve the Complaint at the time it was filed and, therefore, the action was not “commenced” within the statute of limitations.