

Case law can mean failure to ID proper defendant has draconian consequences

By MARK McGRATH

Our favorite plaintiff's attorney has just landed a career case. Damages, liability, causation, it's all there. A visiting Wall Street tycoon has been struck and killed by a truck bearing the name of the state's largest public utility, Carolina Gas and Light Company. The truck driver was drunk, and the accident report clearly identifies the registered owner of the vehicle as "Carolina Gas & Light Co." As fate would have it, the statute of limitations is about to run. The cautious barrister visits the N.C. Secretary of State's Web site, identifies 13 CG&L entities and names each of them in his complaint. He gets the complaint filed on the last day before the statute expires.

Week later a motion to dismiss arrives in the mail, served by the Webillum Lotz firm out of Charlotte, longtime litigation counsel for CG&L. The motion states that none of the entities named in the complaint owned the truck or employed the driver. Rather, the motion reads, a Georgia corporation known as Carolina Gas & Light Company of the Central Piedmont, LCC, owned the rig and employed the driver.

Counsel for the plaintiff files a motion for leave to file an amended complaint to add the Georgia corporation as a party defendant. CG&L opposes the motion, arguing that the statute of limitations has expired and that amending the complaint would therefore be a futile exercise. In short, the motion argues, any claim against the new defendant would be time-barred.

How do things look for our hapless friend? Not good, I'm afraid. The North Carolina courts have long held that complaints cannot be amended to add new parties after the passage of the statute of limitations. The hearing is a disaster for the family of the injured tycoon, and the claim is dismissed with prejudice.

THE RELATION-BACK DOCTRINE

Rule 15(c) provides that "a claim asserted in an amended pleading is deemed to have been interposed at the time the claim in the original pleading was interposed, unless the original pleading does not give notice of the transactions, occurrences, or series of transactions or occurrences, to be proved pursuant to the amended pleading" (emphasis added). >By its plain language, relation-back applies only to newly-added claims. It does not speak to amending pleadings to add new parties.

Clearly, leave should be granted to add new parties just as freely as amendments to add claims. >The question is whether such amendments relate back to the date of original filing in those cases where the statute of limitations has expired in the interim.

The answer is sure to disappoint our fictional plaintiff's attorney. The North Carolina courts have consistently held that amendments adding new parties do not relate back to the date of original filing.

For example, it has been held that where a company is named as a defendant under its current legal name and not the name held at the time of the incident in question, an amendment correcting the error did not relate back to the date of filing and was thus time-barred. Similarly, where a plaintiff sued American Honda Motor Company, Inc., for product defects and learned after expiration of the statute of limitations that Honda Motor Company, Ltd., was the actual manufacturer of the motorcycle, his claim against the latter entity was properly dismissed as untimely.

Amendments as to parties will be deemed to relate back when the amendment merely seeks to correct an incorrectly named party, or misnomer in the parlance of appellate courts. The courts have defined misnomers for which relation back will be permitted as a mere correction "in the description of the party or parties served." For example, where plaintiff sued "Seamark Foods" and, after expiration of the statute of limitations, moved to add the proper party, "Seamark Enterprises, Inc.," the court held that the amendment merely corrected a misnomer. The court noted that "Seamark Foods" was not the name of any legal entity but, rather, a registered d/b/a for the proper defendant. Therefore, the court held, the amended complaint identifying the proper defendant related back to the date of original filing.

The misnomer exception is, however, exceedingly narrow. If the amended complaint attempts to join a legally viable and distinct entity, it will not relate back to the date of original filing. For example, where plaintiff originally named Haywood County Hospital Foundation, Inc., as a defendant and learned after the expiration of the statute of limitations that the proper defendant was a legal entity named Haywood County Hospital, the amendment to add Haywood County Hospital did not relate back, thus barring the claims against it. Similarly, where plaintiff sued Winn-Dixie Stores, Inc., and learned after expiration of the statute that the owner of the store at issue was actually Winn-Dixie Raleigh, Inc., the amendment to add the proper defendant did not relate back and was time-barred.

Utilizing the same rationale the court held that a plaintiff's claims were time-barred where plaintiff named the Hertford County Board of Commissioners and, after the running of the limitations period, sought to amend the complaint to name the proper defendant, Hertford County.

CONCLUSION

The lesson of the case law is clear: Get it right the first time. Except in very narrow circumstances, an amended pleading that adds a new party will not relate back to the date of original filing. Unfortunately, the draconian consequences of naming the wrong defendant encourage defensive and over-inclusive pleading. Sophisticated corporations have taken the corporate shell game to excruciating extremes, and identifying the proper defendant in a given case can be a maddening, and oftentimes impossible, task. >By way of example, the N.C. Secretary of State's Web site identifies a staggering 22 legally distinct entities beginning with the words "Duke Energy."

When the statute of limitations is upon you, what is a riskier proposition, naming the proper defendant in a crowd of corporate relatives or attempting to identify a single perfect defendant and getting it wrong? >The first alternative might raise an angry call from a big firm lawyer or a few motions to dismiss. The latter route will put you on the phone with your insurer.

Pick your poison.