

CONFLICT OF LAWS

NJ Supreme Court Takes Us Back in Time on Tort Statute of Limitations

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The New Jersey Supreme Court has changed the rules of the game with respect to statute of limitations and choice of law for tort actions. Again. On Jan. 24, in *McCarrell v. Hoffmann-La Roche*, the court found that Section 142 of the Second Restatement of Conflicts of Law governed statute of limitations choice of law conflicts. This ruling is a significant and outcome-determinative departure from the most-significant-relationship test previously adopted by the court in *P.V. ex rel. T.V. v. Camp Jaycee*, 197 N.J. 132 (2008), and *Cornett v. Johnson & Johnson*, 414 N.J. Super. 365 (App. Div. 2010), *aff'd as modified*, 211 N.J. 362 (2012).

This article discusses: (1) the recent history of the New Jersey Supreme Court's choice of law jurisprudence in the statute of limitations context; (2) the court's rationale in the *McCarrell* case; and (3) why this change in law will undoubtedly

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overburden the courts and citizens of New Jersey by re-opening the flood gates for lawsuits filed by out of state plaintiffs.

Recent History of Choice of Law Regarding the Statute of Limitations

In New Jersey, historically, the statute of limitations was considered a matter of procedural law

and the forum state applied its own statute of limitations. *Marshall v. Geo. M. Brewster & Son*, 37 N.J. 176 (1962). A little more than a decade later, in *Heavner v. Uniroyal*, the court rejected the notion that the statute of limitations was merely a matter of procedure and instead adopted a new test whereby choice of law for statute of limitations was

determined by weighing the contacts of each state involved. 63 N.J. 130 (1973).

In 1996, the court further clarified *Heavner* in *Gantes v. Kason Corp.*, 145 N.J. 478 (1996). In *Gantes*, the court formally articulated the “government-interest” test in the context of the choice of law analysis. Specifically, the court held that the government-interest test required: “application of the law of the state with the greatest interest in resolving the particular issue that is raised in the underlying litigation.” *Id.* at 484.

The court, however, changed the law again in 2008 in *Camp Jaycee*. Here, the court adopted the substantive most-significant-relationship test set forth in Sections 145, 146 and 6 of the Second Restatement. *Id.* at 142-43. The court found that the substantive law of the place of injury is presumed to be the governing law unless another state has a more significant relationship with the parties and occurrence in accordance with certain factors enumerated in Section 6, including the states’ respective interests and policies. Additionally, in *Cornett*, 211 N.J. 362 (2012), the court determined that there was only a conflict of law when the selection of one statute of limitations over another was outcome determinative.

It is against this back drop—where statute of limitations was considered a matter of substantive and not procedural law, and where the law of the state of injury was presumed to control absent a showing

to overcome such a determination—that the New Jersey Supreme Court decided *McCarrell*.

Factual Background

In July 2003, plaintiff Andrew McCarrell, a resident of Alabama, filed a failure-to-warn products liability action against New Jersey corporations Hoffman-La Roche and Roche Laboratories (collectively, “Roche”), arising out of his consumption of the drug Accutane. *McCarrell v. Hoffmann-La Roche*, 2017 N.J. LEXIS 19, at *12 (Jan. 24, 2017). Roche “designed, manufactured, and labeled Accutane in New Jersey and distributed the medication from th[at] State.” *Id.* at *10. McCarrell purchased and used Accutane, and suffered injury and received subsequent medical treatment, in Alabama. Though McCarrell’s injuries began in 1996, he claimed that he only learned that Accutane could have caused his injuries in 2003.

Roche moved for summary judgment on the grounds that Alabama’s statute of limitations barred McCarrell’s claim. The court applied the *Gantes* government interest test and denied the motion, finding that New Jersey’s statute of limitations jurisprudence applied. While New Jersey and Alabama both apply a two-year limitations period to personal injury claims, the statute of limitations in New Jersey is equitably tolled until the injured party discovers that he may have a claim. Alabama law, by contrast, does not recognize an equivalent discovery rule. The case went to trial for the first time in 2007, and a jury found in McCarrell’s favor.

The Appellate Division reversed on other grounds, and the case was remanded for a new trial.

The case was retried in 2010. Again, Roche sought summary judgment on McCarrell’s claims on the grounds that Alabama’s statute of limitations rendered the plaintiff’s complaint untimely. Despite the fact that the *Camp Jaycee* substantial-relationship test was the law at the time, the trial court again applied the *Gantes* government interest test and denied the motion. At trial, the jury found in favor of McCarrell and awarded the plaintiff over \$25 million in damages.

Arguing that the choice-of-law principles applicable to statutes of limitations had recently changed, Roche moved for judgment notwithstanding the verdict. Under the most-significant-relationship test, the law of the state in which the injury occurred applies unless “some other state has a more significant relationship . . . to the occurrence and the parties.” Restatement (Second) of Conflict of Laws §146. Here, Roche argued, because the injury occurred in Alabama, that state’s statute of limitations should apply. *See McCarrell*, 2017 N.J. LEXIS 19, at *19. The trial judge denied Roche’s motion, but the Appellate Division reversed, holding that the most-significant-relationship test governed, and that Alabama’s statute of limitations applied. As a result, it vacated the judgment and dismissed the complaint.

The New Jersey Supreme Court reversed the decision, holding that Section 142 of the Second Restatement governs choice-of-law disputes regarding statutes of limitations.

Under that framework, New Jersey law applied, and McCarrell's complaint was timely.

The Decision

After determining that the states' laws were actually in conflict, the court reviewed the progression of choice-of-law jurisprudence in New Jersey, from the historical rule to the recent adoption of the most-significant-relationship test. However, because "[t]he rationales for whether the forum state's substantive law or statute of limitations should govern are different," the most-significant-relationship test did not govern which law would apply in the case of a conflict between two different statutes of limitations. *Id.* at *34.

Accordingly, the court went on to analyze whether Section 142 of the Second Restatement should be applied. That section provides that "unless the exceptional circumstances of the case make such a result unreasonable," the forum state will apply its own statute of limitations, unless "maintenance of the claim would serve no substantial interest of the forum . . . and the claim would be barred under the statute of limitations of a state having a more significant relationship to the parties and the occurrence." Restatement (Second) of Conflicts of Laws §142. The court found that, by utilizing a presumption that the forum state's statute of limitations applies, Section 142 would "ensure a higher degree of uniformity and predictability in resolving choice-of-law issues." *McCarrell*, 2017 N.J. LEXIS at *41. This presumption distinguished Section 142 from the

governmental interest test, in which the court must analyze the parties' and occurrence's contacts with each state in order to determine which state has a greater interest. *See Gantes*, 145 N.J. at 485. By contrast, "[s]ection 142 is a less malleable standard" that would create greater uniformity and promote "principles of comity" by treating out-of-state and New Jersey citizens suing in New Jersey courts equally. *McCarrell*, 2017 N.J. LEXIS at *40-41. The court reasoned that adopting Section 142 would also protect New Jersey companies from suits that are filed by out-of-state plaintiffs whose home state applies a longer statute of limitations. *Id.* at *37-38.

Applying Section 142 to the facts before it, the court found that New Jersey possessed a strong interest in the regulation of prescription drugs, and no exceptional circumstances rendered the application of New Jersey's statute of limitations unreasonable. Accordingly, the court held that New Jersey's limitations period and equitable tolling rules applied, and McCarrell's complaint was timely.

The Implications of 'McCarrell'

There are several potential implications from this shift in the law. First, and most obvious, is the likelihood that this decision will make New Jersey an ideal hot spot for plaintiffs to file what would otherwise be stale claims in their home states. Andrew McCarrell is the perfect realization of this shift. It is unclear why, when faced with a policy decision that greatly affects New Jersey corporations generally—and

one of its largest industries, pharmaceutical companies—the court chose to favor out-of-state litigants. This choice also seems to be in direct conflict with the New Jersey Products Liability Act, which was designed, in part, to provide some protection to New Jersey corporations. The burden on New Jersey corporations aside, the ruling also has the negative impact of burdening the courts of this state with additional litigation—which undoubtedly will cost the taxpayers of this state and also in-state litigants, whose cases may be delayed and backlogged.

Moreover, by carving out statute of limitations as a special area of conflict of law jurisprudence, the court has muddied the water on whether New Jersey views the statute of limitations as procedural, substantive or some sort of hybrid. This lack of clarity will lead to disparities in the way these issues are analyzed by the courts.

Finally, despite the court's claim that Section 142 will create greater uniformity, the court's decision actually renders this outcome less likely, as the most-substantial-relationship test was workable and provided certainty and uniformity in all other contexts. Applying a different test solely to the statute of limitations appears to make the law and its application less certain.

While the full impact of the court's decision remains to be seen, the ruling will likely increase the burden and uncertainty of litigation for the courts and litigants alike. ■