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"The Devil Is in the Details": Delaware Supreme Court Affirms Decision Demanding Strict Compliance for Notices of Intent to Investigate Medical Negligence Claims to Toll Statute of Limitations

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In *Berry v. Connections Community Support Programs, Inc.*, the Delaware Supreme Court affirmed the Delaware Superior Court's decision wherein it refused to validate a properly served Notice of Intent to Investigate (Notice of Intent), meant to extend the statute of limitations, even though the notice letter made general reference to a potential claim, where it was too vague and otherwise failed to strictly comply with the requirements of the applicable statute. As a result, the court dismissed plaintiff's claim as time barred.

In *Berry*, the plaintiff claimed a spinal injury suffered in prison went undiagnosed for several months and was not properly treated, resulting in pain and exacerbation of the injury. A year before the statute of limitations ran, the plaintiff – who has since been released from prison — mailed his medical records to the prison health contractor via regular USPS mail, along with a request to settle the case before suit was filed. Then about three months before the statute was to run, the plaintiff sent a second letter, this time via certified mail and labeled "Notice of Intent to investigate." Delaware's Medical Negligence Act (18 *Del. C.* §6801, *et seq.*) allows a plaintiff to toll the statute of limitations for up to 90 days by sending a Notice of Intent to each potential defendant by certified mail with a return receipt requested, to the defendant's regular place of business. The statute specifies that the Notice of Intent must contain: (1) the name of the potential defendant or defendants; (2) the potential plaintiff; and (3) a brief description of the issue plaintiff's counsel is investigating. The plaintiff's second letter, sent via certified mail, simply stated that it was a Notice of Intent, the name of the plaintiff and that "[t]here is reason to believe that the treatment provided to [Plaintiff] by agents and employees of [the prison health contractor] fell below the applicable standards of care." The plaintiff filed suit three weeks after the expiration of the statute of limitations.

The prison health contractor moved to dismiss the case, arguing that the plaintiff did not strictly comply with the Notice of Intent statute and therefore had not tolled the limitations period, making his complaint time-barred. The court held that the validity of the Notice of Intent is a threshold requirement that demands strict compliance. The court found that the plaintiff's first letter was not a Notice of Intent at all, and that his second letter was statutorily deficient. The court observed that the plaintiff never manifested his intent to investigate in his first letter or serve it appropriately, even though the letter did contain some information required for a valid Notice of Intent. The second letter, however, *did* manifest an intent to investigate, but did not incorporate or otherwise reference the first letter, included only vague reference to "agents and employees" rather than the specific identity of the named defendant and included only a claim that the treatment rendered by the prison health care contractor's agents and employees fell below applicable standards of care, which the court found too brief and general to put a party on notice of the issues at play in the potential case.

The decision in *Berry* makes plain that the court will strictly construe the statutory requirements for a valid Notice of Intent and, where the requirements are not satisfied, will not hesitate to dismiss a case as time-barred, even when a party is on notice of a potential claim. The court's rationale in *Berry* will apply beyond the area of prison healthcare and should expose more medical negligence cases to preliminary dismissal based on the statute of limitations. Based on this decision, any Notice of Intent should be carefully scrutinized for compliance with the applicable statute.

Dana Spring Monzo and Kelly Rowe argued *Berry* before the Delaware Superior Court and defended the dismissal on appeal to the Delaware Supreme Court. They represent individual healthcare providers and institutions in civil lawsuits and administrative proceedings throughout Delaware and are part of the firm's Healthcare practice group. For more information on this and other related matters, contact Dana Spring Monzo (monzod@whiteandwilliams.com; 302.467.4526) or Kelly Rowe (rowek@whiteandwilliams.com; 302.467.4504;).