

# MINNESOTA LAWYER

## Legal News

September 14, 2009

### Column: 'Fleeger v. Wyeth' - A clarification

by Yvonne M. Flaherty & Matthew R. Salzwedel 1, Lockridge Grindal Nauen P.L.L.P. Guest Commentary

On September 3, the Supreme Court of Minnesota decided *Fleeger v. Wyeth*.<sup>2</sup> The certified question presented in *Fleeger* was:

In a case commenced in Minnesota, does the Minnesota statute of limitations apply to the personal injury claims of a non-Minnesota resident against a defendant not a resident of Minnesota, where the events giving rise to the claims did not occur in Minnesota and took place before August 1, 2004?<sup>3</sup>

The question addressed by the court in *Fleeger* was whether statutes of limitation are procedural, requiring a Minnesota court to apply Minnesota law regardless of whether Minnesota has any direct connection to the underlying claims, or substantive, requiring the court to conduct a choice-of-law analysis and possibly apply the statute of limitations of another state.

In an opinion by Chief Justice Eric Magnuson, the Supreme Court held that, for cases commenced in Minnesota by out-of-state plaintiffs where the events giving rise to the plaintiffs' claims occurred outside of Minnesota before August 1, 2004, *stare decisis* considerations dictated that Minnesota's statutes of limitation apply to those claims. The court pointed out that, when it had directly addressed the substance-versus-procedure dichotomy in the context of statutes of limitation, it had "considered statutes of limitation to be procedural without exception" and had "applied the Minnesota statutes of limitation to cases properly commenced [in Minnesota] regardless of whether those cases [had] any connection to this state."<sup>4</sup>

The court in *Fleeger* declined defendants' invitation to depart from its precedent and to treat statutes of limitations as substantive for choice-of-law purposes, noting that it did "not have a compelling reason to overrule [its] long-standing precedent that the Minnesota statute of limitations applies in cases properly commenced here," at least for cases brought in Minnesota by out-of-state plaintiffs where the events giving rise to the claims arose before August 1, 2004, when Minnesota enacted a new conflicts-of-law statute, the Uniform Conflict of Laws-Limitations Act, Minn. Stat. § 541.30, et seq.<sup>5</sup>

The court's holding in *Fleeger* was narrow because the certified question before it was narrow. But *Fleeger* also appears to have clarified several important questions related to the application of statutes of limitation. For example, the court in *Fleeger* suggested that all issues of law incidental to the application of statutes of limitation also are procedural. On page six of its slip opinion, the court cited favorably to its decision in *Weston v. Jones*, 199 N.W. 431 (1924), which, in turn, had stated that it was "a fundamental principle that remedies are governed by the law of the forum, and this principle is controlling in all matters relating to the statute of limitations."<sup>6</sup> (Emphasis added.) The court in *Fleeger*, unfortunately, did not elaborate on this statement in *Weston*.

There is no reason to think, however, that the Minnesota Supreme Court would treat issues of law incidental to the application of statutes of limitation any differently than statutes of limitation themselves.

For out-of-state claims brought in Minnesota where the events giving rise to the claims occurred before August 1, 2004, like those addressed by the court in *Fleeger*, Minnesota courts have provided little guidance on the question whether issues of law incidental to the application of statutes of limitation should be considered as procedural. A handful of federal court decisions, however, have suggested that issues of law incidental to the application of statutes of limitation should be considered part and parcel with the statutes of limitation themselves. In *Johnson v. Railway Express Agency, Inc.*, for example, the United States Supreme Court observed that "[i]n virtually all statutes of limitations the chronological length of the limitation period is interrelated with provisions regarding tolling, revival, and questions of application."<sup>7</sup> Similarly, in *Smith v. City of Chicago Heights*, the Seventh Circuit acknowledged that equitable tolling is a part of a state's limitation period.<sup>8</sup> In *Barry v. Donnelly*, the Fourth Circuit similarly concluded that forum law applied to "all matters involving the application of the statute of limitations, including whether and how the statute may be tolled by a particular event."<sup>9</sup> The First Circuit and the federal district court for the Northern District of Illinois appear to be in accord with these decisions.<sup>10</sup>

In summary, *Fleeger* clarified several important questions related to the bare application of the Minnesota statutes of limitation. There is no reason to think, however, that the Supreme Court of Minnesota would treat issues of law incidental to the application of statutes of limitation any different than statutes of limitation themselves. Any other conclusion would be inconsistent with the court's conclusion in *Fleeger* that statutes of limitation are procedural, the court's concomitant favorable citation to *Weston*, which states that "remedies are governed by the law of the forum, and this principle is controlling in all matters relating to the statute of limitations,"<sup>11</sup> and the other decisions discussed above that have deemed issues of law incidental to the application of statutes of limitation to be intertwined with the statutes of limitation themselves.

#### References:

1 Yvonne M. Flaherty is a partner at Lockridge Grindal Nauen P.L.L.P. and a member of the firm's products liability, antitrust, and commercial litigation practices. Matthew R. Salzwedel is an associate at Lockridge Grindal Nauen P.L.L.P. and a member of the firm's

antitrust and commercial litigation practices.

2 *Fleeger v. Wyeth*, No. A08-2124, — N.W.2d —, 2009 WL 2778211, \*1, slip op. at 2 (Minn. Sept. 3, 2009).

3 In *Fleeger*, the court specifically addressed application of Minnesota's six-year statute of limitations for negligence. See *id.* at \*2, slip op. at 4.

4 *Id.* at \*4, slip op. at 8-9.

5 *Id.* at \*5, slip op. at 10. *Fleeger* left unaffected the application of Minnesota's Uniform Conflict of Laws-Limitations Act, Minn. Stat. § 541.30, et seq. (2008).

6 *Fleeger*, 2009 WL 2778211, at \*3, slip op. at 6 (quoting *Weston v. Jones*, 199 N.W. 431, 432-33 (1924)).

7 8 421 U.S. 454, 464 (1975).

8 951 F.2d 834, 839 n.5 (7th Cir. 1992).

9 781 F.2d 1040, 1042 n.4 (4th Cir. 1986).

10 *Valedon Martinez v. Hospital Presbiteriano de la Comunidad, Inc.*, 806 F.2d 1128, 1133 (1st Cir. 1986) ("When applying Puerto Rico statutes of limitations, Puerto Rico courts also apply the concomitant tolling provisions of those statutes."); *Schacht v. Baccala & Shoop Ins. Servs.*, No. 91 C 2228, 1993 WL 469909, \*6 (N.D. Ill. Nov. 12, 1993) ("In applying the Illinois statutes of limitation we must also look to the related tolling doctrines and extensions recognized under Illinois law.").

11 *Fleeger*, 2009 WL 2778211, at \*2, slip op. 6 (quoting *Weston*, 199 N.W. at 432-33).

---

Copyright 2009 Minnesota Lawyer All Rights Reserved  
730 South Second Ave., Minneapolis, MN 55402 (612) 333-4244