STATE OF MICHIGAN

COURT OF APPEALS

ROSALIE ARNOLD, Personal Representative of the Estate of Cecil Arnold,

Plaintiff–Appellant,

v

OWENS-CORNING FIBERGLASS CORPORATION; PITTSBURGH CORNING CORPORATION; GAF CORPORATION in its own right and as successor to RUBEROID CORPORATION; ARMSTRONG WORLD INDUSTRIES, INC., formally known as ARMSTRONG CORK COMPANY; OWENS-ILLINOIS, INC.; FIBREBOARD CORPORATION, in its own right and as successor to the PARAFFINE COMPANIES, INC.; UNITED STATES GYPSUM COMPANY, in its own right and as successor in interest to U.S. GYPSUM COMPANY; NATIONAL GYPSUM COMPANY; BROWN INSULATION COMPANY, in its own right and as successor to PERCY BROWN, doing business as BROWN INSULATION COMPANY; COON DEVISSER COMPANY; GARLOCK INC.; GEORGIA PACIFIC CORPORATION; MECHANICAL INSULATION SERVICES, INC., in its own right and as successor in interest to J.W. WILLMAN, and to J.W. WILLMAN ASBESTOS COMPANY; UNITED STATES MINERAL PRODUCTS CO., also known as UNITED STATES MINERAL PRODUCTS COMPANY, formally known as UNITED STATES MINERAL WOOL COMPANY, in its own right and as successor to and/or formally known as COLUMBIA ACOUSTICS AND FIREPROOFING COMPANY.

UNPUBLISHED
November 8, 1996

No. 180428
LC No. 93-302536-NP

Defendants–Appellees,

and

KEENE BUILDING PRODUCTS CORPORATION; KEENE CORPORATION in its own right and as successor to BALDWIN EHRET HILL, INC., to EHRET MAGNESIA MANUFACTURING COMPANY, to MUNDET CORK COMPANY, to MUNDET COMPANY and to KEENE BUILDING PRODUCTS CORPORATION; ACME INSULATION INC.; and PPG INDUSTRIES INC.,

Not Participating.

Before: Michael J. Kelly, P.J., and Markman and J. L. Martlew,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's order granting defendants summary disposition pursuant to MCR 2.116(C)(7). The lower court employed Michigan's borrowing statute, MCL 600.5861; MSA 27A.5861 to apply Virginia's two-year statute of limitation to plaintiff's wrongful death claim. We affirm.

Plaintiff, personal representative of the estate of the decedent Cecil Arnold, brought this action premised upon Arnold's alleged exposure to asbestos. Plaintiff alleges that Arnold was exposed to asbestos while he was employed by the Michigan Board of Education from 1951 to 1960. In 1960, Arnold left Michigan and, from 1972 until his death, was a resident of Virginia. In June 1990, Arnold was diagnosed with mesothelioma, a disease which results from asbestos exposure, and on December 21, 1990, he died from that disease. On January 26, 1993, plaintiff filed this action in Wayne Circuit Court.

Defendants argued in their motion for summary disposition that plaintiff's claims were barred by Virginia's two-year statute of limitations for tort claims which were "borrowed" by Michigan's statute. The lower court agreed and dismissed plaintiff's claims. On appeal, plaintiff first argues that the trial court erred in finding that the cause of action accrued at the time -- and the place (Virginia) -- Arnold was *diagnosed* with mesothelioma. Rather, according to plaintiff, the cause of action accrued at the time -- and the place (Michigan) -- where Arnold was *exposed* to asbestos. We disagree with plaintiff.

In *Larson* v *Johns-Manville Corp*, 427 Mich 301, 304-305; 399 NW2d 1 (1988), the Michigan Supreme Court explicitly held that a cause of action for asbestos-related disease accrues "from the time the claimant knows or should have known of the disease, rather than the time of exposure to asbestos or at the time of diagnosable injury." The Court based this on authority

---

* Circuit judge, sitting on the Court of Appeals by assignment.

holding that a statute of limitations is not triggered by the breach of duty by the defendant; rather it is triggered by the injury which results from that breach. *Id*. at 309. Under *Larson*, for a claim based on an asbestos-related disease, the date the injury results is when the claimant knows or should have known of the disease, or at the time of diagnosis. *Id.* Plaintiff's reliance on *Meyerhoff* v *Turner Constr Co*, 202 Mich App 499; 509 NW2d 847 (1993) is misplaced. *Meyerhoff* is distinguishable since it involves a claim for medical monitoring, rather than a claim based on asbestos-related disease which is expressly addressed by *Larson*.

Plaintiff attempts to distinguish between a discovery rule which sets the time from which the statute of limitations begins to accrue and the actual point in time and place where the cause of action accrues. This is an innovative argument but not one consistent, in our judgment, with the express direction of the Supreme Court in *Larson*. We do not share plaintiff's interpretation of *Jeffrey v Rapid American Corp*, 448 Mich 178; 529 NW2d 644 (1995) and believe that, contrary to his assertion, the Supreme Court has previously held clearly that a cause of action "accrues when and where injury and damage are suffered." *Parish v B.F. Goodrich*, 395 Mich 271, 275; 235 NW2d 570 (1975). Arnold's injury accrued upon receiving the diagnosis of asbestos-related disease. *Larson*, *supra*, at 304-305. Therefore, we conclude that Arnold's cause of action accrued in Virginia, his place of residence when he was diagnosed with the disease. *Parish*, *supra*, at 275.

Michigan's borrowing statute, MCL 600.5861; MSA 27A.5861, provides in part:

> An action based upon a cause of action accruing without this state shall not be commenced after the expiration of the statute of limitations of either this state or the place without this state where the cause of action accrued, except that where the cause of action accrued in favor of a resident of this state the statute of limitations of this state shall apply.

This statute has been interpreted to mean that if the statute of limitations of either state bars the plaintiff's claim, the action should be dismissed as untimely. *Bechtol* v *Mayes*, 198 Mich App 691, 693-694; 499 NW2d 439 (1993). Virginia statute provides that "actions for injury to the person resulting from exposure to asbestos" must be brought no "more than two years after the death of such person." Va Code Ann §8.01-249(4). It is undisputed that plaintiff brought her claim more than two years after Arnold's death. Therefore, the Virginia statute of limitations for asbestos-related injuries bars plaintiff's claim. Pursuant to Michigan's borrowing statute, the fact that plaintiff's claim was barred by the Virginia statute of limitations also bars the action in Michigan. *Bechtol*, *supra*, at 693-694.

Next, plaintiff argues that Michigan's borrowing statute should be construed to include an exception for situations where a defendant is not subject to the jurisdiction of the state whose statute of limitations is to be applied. We disagree.

The primary purpose of statutory construction is to ascertain and give effect to the intent of the Legislature. *Farrington* v *Total Petroleum, Inc*, 442 Mich 201, 212; 501 NW2d 76 (1993). The threshold criterion for determining intent is the plain language of the statute. *House Speaker* v *State Administrative Bd*, 441 Mich 547, 567; 495 NW2d 539 (1993). Where the specific language of the

statute is clear, judicial construction is neither necessary nor permitted. *Lorencz* v *Ford Motor Co*, 439 Mich 370, 376; 483 NW2d 844 (1992).

The specific language of the borrowing statute contains no requirement that the defendant be amenable to suit in the state whose statute of limitations is to be applied. We decline plaintiff's invitation to engraft such an exception onto the plain language of the statute and instead leave this matter to future legislatures for debate. Nor, contrary to plaintiff's assertion, is the result of application of the borrowing statute to this case inconsistent with the purposes and policies of the statute. *Rowell v Security Steel Processing*, 445 Mich 347, 354; 518 NW2d 409 (1994). The borrowing statute has the dual purpose of resolving conflict of law questions and discouraging forum shopping. *Smith* v *Elliard*, 110 Mich App 25, 30; 312 NW2d 161 (1981). Application of the borrowing statute to this case clearly resolves the question of which statute of limitations to apply. Furthermore, the application of the borrowing statute is consistent with the legislative purpose of discouraging forum shopping. The specific language of the statute being plain, no judicial construction is warranted. *Lorencz*, *supra*, at 376.

Plaintiff next asserts that even though Virginia's two-year statute of limitations applies, the running of the limitations period was tolled by the applicable Michigan tolling provision, MCL 600.5852; MSA 27A.5852. We disagree again.

This Court has held that, under the borrowing statute, the tolling provisions to be applied are those from the state whose statute of limitations is being applied. *Makarow* v *Volkswagen*, 157 Mich App 401, 411-413; 403 NW2d 563 (1987); *Hover* v *Chrysler Corp*, 209 Mich App 314, 319; 530 NW2d 96 (1995). Plaintiff's reliance on *DeVito* v *Blenc*, 47 Mich App 524; 209 NW2d 728 (1973) is misplaced since that case involved a plaintiff who was a Michigan resident. *Makarow*, *supra*, at 411-412; *Hover*, *supra*, at 318. Therefore, we conclude that Virginia's, not Michigan's, tolling provisions are applicable to plaintiff's claims.

Finally, plaintiff asserts that the application of the borrowing statute to her claims is violative of her rights to due process. We disagree.

Plaintiff first raised this argument in her motion for reconsideration before the trial court. We review the grant or denial of a motion for reconsideration for an abuse of discretion. *Cason* v *Auto Owners*, 181 Mich App 600, 605; 450 NW2d 6 (1989). The denial of a motion for reconsideration premised on a legal theory which could have been advanced in connection with the original motion does not constitute an abuse of discretion. *Charbeneau* v *Wayne Co Hosp*, 158 Mich App 730, 733; 405 NW2d 151 (1987). In any case, this Court has previously held that the borrowing statute is reasonably related to a permissible legislative purpose. *Szlinis* v *Moulded Fiber Glass Co*, 80 Mich App 55, 67; 263 NW2d 282 (1977). As applied in the present case, the borrowing statute achieves its intended purpose of resolving the conflict of law question in a reasonable fashion. We conclude, therefore, that application of the borrowing statute to the present case is not violative of due process.

Affirmed

/s/ Stephen J. Markman
/s/ Jeffrey L. Martlew

Judge Michael J. Kelly not participating.