

# WASHINGTON CASE UPDATE

## Corporate Confusion: Amending the Complaint after the Statute of Limitations Period

**From the desk of Kyle Riley: Is a plaintiff allowed to amend her complaint after the statute of limitations has run where she named the wrong company due to confusing corporate identities? Read on to find out how the Washington Supreme Court resolved this question.**

**Claims Pointer: A plaintiff will be allowed to amend its complaint to include a defendant when it “relates back” under CR 15(c) and if the delay was not caused by “inexcusable neglect.” In order to demonstrate inexcusable neglect, the added defendant must demonstrate that its identity was readily available through public sources. The Washington Supreme Court stressed that public sources must connect the dots when subsidiaries are transferred between multiple companies.**

case in point...

Martin v. Dematic, \_\_\_ Wash. 2d \_\_\_, 340 P.3d 834 (2014).

On August 13, 2004, Donald Martin was killed by a machine at a paper mill. His wife, Nina Martin (Martin) filed a wrongful death claim on June 29, 2007 (within the 3-year statute of limitations). Martin named several defendants in the suit, including “General Construction Company dba/fka Wright Schuchart Harbor Company.” Martin served a copy of the complaint and summons on General Construction Company (GCC) on July 5, 2007. Martin alleged that Wright Schuchart Harbor co. (WSH) installed the machine that killed her husband and that GCC was its corporate successor.

GCC tendered the defense and demanded indemnity from Fletcher General Inc. and Fletcher Construction Company North America (FCCNA). On October 19, 2007 (two months after the statute of limitations), GCC filed its answer, including a third party claim against Fletcher General—this was the first time Martin had notice of Fletcher General’s involvement. On December 11, 2009, GCC filed for summary judgment, arguing that it was not the true successor of WSH’s liability.

The transfer of ownership of WSH’s liability was fairly complex. GCC explained that in 1981, Wright Schuchart Inc. (WSI) purchased WSH and another company called “General Construction Company,” so both were subsidiaries of WSI. In 1987, WSI was sold to a subsidiary of FCCNA, which assumed WSH’s liabilities. FCCNA merged several companies (including WSI and “General Construction Company”) into Fletcher General. In 1996, Fletcher General sold the majority of its assets to its managers, who formed a new company, GCC (the company that Martin sued). Fletcher General agreed to assume all preexisting liabilities prior to 1996. In a separate deal in 2001, Fletcher General

merged with FCCNA, which assumed the WSH liabilities.

On January 22, 2010, Martin filed an amended complaint, arguing (1) that her claim “related back”; (2) that naming GCC tolled the statute of limitations; and (3) her claim was tolled until the moment she discovered FCCNA’s identity. The trial court denied Martin leave to file an amended complaint, ruling that Martin had failed to exercise reasonable diligence in identifying FCCNA. The trial court stated that Martin could have discovered FCCNA’s identity had it (1) searched the Washington Secretary of State’s website, (2) found a 1993 news article announcing the merger, and (3) a review of GCC’s website describing its history. Martin appealed. The Court of Appeals affirmed, relying on the trial court’s reasoning.

The Washington Supreme Court only accepted review on the first issue addressed in the lower courts—whether Martin’s claim “related back” under CR 15(c). In order for a claim to relate back, the added party must have received notice within the statute of limitations and the added party must have known or should have known that but for the mistake in identity, it would have been sued. FCCNA conceded that it had notice because it received GCC’s tender letter and demand for indemnity on July 24, 2007. The court also found that GCC’s letter fulfilled the “should have known” requirement.

The court’s analysis focused primarily on whether Martin’s delay in amending the complaint was due to “inexcusable neglect.” Inexcusable neglect boils down to two questions: (1) whether the identity of the defendant is readily available, and (2) whether plaintiff provides a reason for failing to name the correct defendant. The court clarified that the defendant bears the initial burden of showing that



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its identity was easily ascertainable and only then does the burden shift to the plaintiff to show that it had a reason for the delay.

FCCNA argued, as it did before the trial court, that the combination of documents it provided were available to the public and readily ascertainable. The court ruled that while the documents “could have pointed Martin to a Fletcher entity, it would have been difficult for Martin to realize” that FCCNA was the correct defendant. The court further stated that “no single document could have directly connected WSH and FCCNA, and even a combination would not have cleanly connected the dots between the two.” The Supreme Court concluded by stating that contrary to the ruling by the Court of Appeals, the Secretary of State filing only showed WSI merging into Fletcher General, and without some document connecting WSH to WSI, FCCNA’s identity was not easily ascertainable. The Washington Supreme Court reversed the lower courts, allowing Martin to amend her complaint.



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