

# OREGON LAW UPDATE

## Negligence Claim Dismissed When Defendant Misidentified in Complaint

**From the desk of Jeff Eberhard: This case discusses the importance of selecting the correct party to name as a defendant in a lawsuit. When the wrong defendant is identified in a complaint, an amended complaint stating the proper defendant must be filed before the statute of limitations on the claim expires.**

**Claims Pointer: A plaintiff has not adequately notified the defendant of a lawsuit when she misidentifies the defendant as a deceased person and after the statute of limitations has passed, amends the complaint to name the personal representative of the decedent's estate as defendant.**

case in point...

Worthington v. Estate of Davis, in the Court of Appeals of the State of Oregon, A147059, --- P3d ---- (June 27, 2012).

Peggy Worthington was involved in a car accident with Milton Davis, a driver of another vehicle, on December 10, 2007. Worthington claimed the accident was caused by Davis' negligence and filed a complaint naming Davis as the defendant on December 9, 2009. Unknown to Worthington and her attorney at the time, Davis had died in September of 2008. It was not until two days after the complaint was filed that Worthington's attorney learned of Davis' death. Davis' widow, Yvonne Davis, was served the complaint and summons three weeks later. On January 27, 2010, Thomas A. Huntsberger was appointed as the personal representative of Davis' estate (the Estate). The next day but after the two-year statute of limitations on a negligence claim had passed, Worthington amended her complaint to name Davis' estate and Thomas A. Huntsberger as defendants.

In trial court, the Estate argued both complaints should be dismissed because the statute of limitations on the negligence claim had ended prior to the filing of the amended complaint, and the name change in the amended complaint did not relate back to the original. The Estate also claimed the court did not have jurisdiction over a deceased person and serving his widow was insufficient. The trial court agreed with the Estate and dismissed the complaints.

On appeal, Worthington argued the name change did not change the party against whom she filed suit. She claimed this was a "misnomer" case where she had chosen the correct defendant, but simply misnamed it. Thus, the amended complaint related back to the original complaint and should not have been dismissed. The Estate argued the

name change was made because Worthington had chosen the wrong defendant. The Estate characterized the case as one of "misidentification" and claimed the amended complaint changed who was being sued.

The Court of Appeals agreed with the Estate that Worthington had misidentified the defendant and not simply misnamed it. Worthington sued a person who had died, rather than the personal representative of the decedent's estate. The personal representative of a deceased person's estate is not the decedent by a different name because it cannot assume the legal identity of a decedent until his death. Since Worthington did not file the amended complaint stating the proper defendant until after the two-year statute of limitations had expired, the personal representative did not have proper notice of the litigation, and the amended complaint did not relate back to the date of the original complaint's filing. Thus, the Estate's motion to dismiss the complaint was properly granted.



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