

**WISCONSIN SUPREME COURT
WEDNESDAY, FEBRUARY 4, 2015
1:30 p.m.**

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which reversed a Eau Claire County Circuit Court decision, Judge Lisa K. Stark, presiding.

2012AP1493

Christ v. Exxon Mobil

This case examines several issues arising from wrongful death and survival claims filed against Exxon Mobile Corp. and other companies for allegedly contributing to the presence of benzene-containing petroleum products at a Uniroyal tire factory in Eau Claire. The plaintiffs, including Donald Christ, are former Uniroyal employees and special administrators of deceased employees' estates who allege injuries from benzene exposure.

Some background: A three-year statute of limitations applies to wrongful death and survival claims. See § 893.54(2), Stats. It is undisputed that these plaintiffs filed their claims more than three years after the death of the former employees.

Exxon sought dismissal of the plaintiffs' suit on the ground that the plaintiffs' claims were time barred, and the circuit court agreed with Exxon. The plaintiffs alleged that the discovery rule applied to their claims and that, accordingly, the claims were timely brought.

The plaintiffs appealed. Exxon cross-appealed. The Court of Appeals found the Christs' arguments persuasive, and it reversed in part and remanded for further proceedings on the question of whether the plaintiffs' claims were time barred after application of the discovery rule.

The Court of Appeals, consistent with its decision in Beaver v. Exxon Mobile Corp., No. 2012AP542 (WI App May 9, 2013), concluded that the discovery rule applied to the plaintiffs' claims.

The appellate court noted that in Beaver it held that wrongful death and survival claims alleging the same basis for liability as set forth here were subject to the discovery rule, which provides that the statute of limitations begins to run when the plaintiff discovers or should have discovered the injury and that the injury may have been caused by the defendant. See Doe v. Archdiocese of Milwaukee, 211 Wis. 2d 312, 335, 565 N.W.2d 94 (1997).

Exxon argues that the court of appeals' decision here is contrary to its decision in Beaver because, unlike the circuit court in Beaver, the circuit court here agreed that the discovery rule applied but went on to conclude that the discovery rule failed to save the plaintiffs' claims. Exxon argues that by failing to acknowledge that the trial court already applied the discovery rule, the court of appeals violated Exxon's vested property right in its statute of limitations defense.

Christ says contrary to Exxon's representations, the circuit court here never applied the discovery rule to the plaintiffs' claims. The plaintiffs argue that the issue presented in Beaver is identical to that presented here and there is no more reason to review the issue here than there was last year when the Beaver petition for review was filed.