ORC Ann. 2305.10

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§ 2305.10 Product liability claims and actions for bodily injury or injuring personal property; childhood sexual abuse.

(A) Except as provided in division (C) or (E) of this section, an action based on a product liability claim and an action for bodily injury or injuring personal property shall be brought within two years after the cause of action accrues. Except as provided in divisions (B)(1), (2), (3), (4), and (5) of this section, a cause of action accrues under this division when the injury or loss to person or property occurs.

(B)

(1) For purposes of division (A) of this section, a cause of action for bodily injury that is not described in division (B)(2), (3), (4), or (5) of this section and that is caused by exposure to hazardous or toxic chemicals, ethical drugs, or ethical medical devices accrues upon the date on which the plaintiff is informed by competent medical authority that the plaintiff has an injury that is related to the exposure, or upon the date on which by the exercise of reasonable diligence the plaintiff should have known that the plaintiff has an injury that is related to the exposure, whichever date occurs first.

(2) For purposes of division (A) of this section, a cause of action for bodily injury caused by exposure to chromium in any of its chemical forms accrues upon the date on which the plaintiff is informed by competent medical authority that the plaintiff has an injury that is related to the exposure, or upon the date on which by the exercise of reasonable diligence the plaintiff should have known that the plaintiff has an injury that is related to the exposure, whichever date occurs first.

(3) For purposes of division (A) of this section, a cause of action for bodily injury incurred by a veteran through exposure to chemical defoliants or herbicides or other causative agents, including agent orange, accrues upon the date on which the plaintiff is informed by competent medical authority that the plaintiff has an injury that is related to the exposure, or upon the date on which by the exercise of reasonable diligence the plaintiff should have known that the plaintiff has an injury that is related to the exposure, whichever date occurs first.

(4) For purposes of division (A) of this section, a cause of action for bodily injury caused by exposure to diethylstilbestrol or other nonsteroidal synthetic estrogens, including exposure before birth, accrues

upon the date on which the plaintiff is informed by competent medical authority that the plaintiff has an injury that is related to the exposure, or upon the date on which by the exercise of reasonable diligence the plaintiff should have known that the plaintiff has an injury that is related to the exposure, whichever date occurs first.

(5) For purposes of division (A) of this section, a cause of action for bodily injury caused by exposure to asbestos accrues upon the date on which the plaintiff is informed by competent medical authority that the plaintiff has an injury that is related to the exposure, or upon the date on which by the exercise of reasonable diligence the plaintiff should have known that the plaintiff has an injury that is related to the exposure, whichever date occurs first.

(C)

(1) Except as otherwise provided in divisions (C)(2), (3), (4), (5), (6), and (7) of this section or in *section 2305.19 of the Revised Code*, no cause of action based on a product liability claim shall accrue against the manufacturer or supplier of a product later than ten years from the date that the product was delivered to its first purchaser or first lessee who was not engaged in a business in which the product was used as a component in the production, construction, creation, assembly, or rebuilding of another product.

(2) Division (C)(1) of this section does not apply if the manufacturer or supplier of a product engaged in fraud in regard to information about the product and the fraud contributed to the harm that is alleged in a product liability claim involving that product.

(3) Division (C)(1) of this section does not bar an action based on a product liability claim against a manufacturer or supplier of a product who made an express, written warranty as to the safety of the product that was for a period longer than ten years and that, at the time of the accrual of the cause of action, has not expired in accordance with the terms of that warranty.

(4) If the cause of action relative to a product liability claim accrues during the ten-year period described in division (C)(1) of this section but less than two years prior to the expiration of that period, an action based on the product liability claim may be commenced within two years after the cause of action accrues.

(5) If a cause of action relative to a product liability claim accrues during the ten-year period described in division (C)(1) of this section and the claimant cannot commence an action during that period due to a disability described in *section 2305.16 of the Revised Code*, an action based on the product liability claim may be commenced within two years after the disability is removed.

(6) Division (C)(1) of this section does not bar an action for bodily injury caused by exposure to asbestos if the cause of action that is the basis of the action accrues upon the date on which the plaintiff is informed by competent medical authority that the plaintiff has an injury that is related to the exposure, or upon the date on which by the exercise of reasonable diligence the plaintiff should have known that the plaintiff has an injury that is related to the exposure, whichever date occurs first.

(7)

(a) Division (C)(1) of this section does not bar an action based on a product liability claim against a manufacturer or supplier of a product if all of the following apply:

(i) The action is for bodily injury.

(ii) The product involved is a substance or device described in division (B)(1), (2), (3), or (4) of this section.

(iii) The bodily injury results from exposure to the product during the ten-year period described in division (C)(1) of this section.

(b) If division (C)(7)(a) of this section applies regarding an action, the cause of action accrues upon the date on which the claimant is informed by competent medical authority that the bodily injury was related to the exposure to the product, or upon the date on which by the exercise of reasonable diligence the claimant should have known that the bodily injury was related to the exposure to the product, whichever date occurs first. The action based on the product liability claim shall be commenced within two years after the cause of action accrues and shall not be commenced more than two years after the cause of action accrues.

(D) This section does not create a new cause of action or substantive legal right against any person involving a product liability claim.

(E) An action brought by a victim of childhood sexual abuse asserting any claim resulting from childhood sexual abuse, as defined in *section 2305.111 of the Revised Code*, shall be brought as provided in division (C) of that section.

(F) As used in this section:

(1) “Agent orange,” “causative agent,” and “veteran” have the same meanings as in *section 5903.21 of the Revised Code*.

(2) “Ethical drug,” “ethical medical device,” “manufacturer,” “product,” “product liability claim,” and “supplier” have the same meanings as in *section 2307.71 of the Revised Code*.

(3) “Harm” means injury, death, or loss to person or property.

(G) This section shall be considered to be purely remedial in operation and shall be applied in a remedial manner in any civil action commenced on or after April 7, 2005, in which this section is relevant, regardless of when the cause of action accrued and notwithstanding any other section of the Revised Code or prior rule of law of this state, but shall not be construed to apply to any civil action pending prior April 7, 2005.

History

GC § 11224-1; 112 v 237; Bureau of Code Revision, 10-1-53; 138 v H 716 (Eff 6-12-80); 139 v S 406 (Eff 8-26-82); 140 v H 72 (Eff 5-31-84); *146 v H 350* (Eff 1-27-97); *149 v S 108*, § 2.01. Eff 7-6-2001; *150 v S 80*, § 1, eff. 4-7-05; *151 v S 17*, § 1, eff. 8-3-06.

Annotations

Notes

Publisher's Note:

Section 2.02(B) of SB 108 (149 v —) repeals the HB 350 (146 v —) version and section 3(A)(3) revives and amends the former version.

Editor's Notes

The provisions of § 3(C) of S.B. 80 (150 v —) read as follows:

SECTION 3. The General Assembly makes the following statement of findings and intent:

* * *

(C) In enacting division (D)(2) of *section 2125.02* and division (C) of *section 2305.10 of the Revised Code* in this act, it is the intent of the General Assembly to do all of the following:

(1) To declare that the ten-year statute of repose prescribed by division (D)(2) of *section 2125.02* and division (C) of *section 2305.10 of the Revised Code*, as enacted by this act, are specific provisions intended to promote a greater interest than the interest underlying the general four-year statute of limitations prescribed by *section 2305.09 of the Revised Code*, the general two-year statutes of limitations prescribed by *sections 2125.02* and *2305.10 of the Revised Code*, and other general statutes of limitations prescribed by the Revised Code;

(2) To declare that, subject to the two-year exceptions prescribed in division (D)(2)(d) of *section 2125.02* and in division (C)(4) of *section 2305.10 of the Revised Code*, the ten-year statutes of repose shall serve as a limitation upon the commencement of a civil action in accordance with an otherwise applicable statute of limitations prescribed by the Revised Code;

(3) To recognize that subsequent to the delivery of a product, the manufacturer or supplier lacks control over the product, over the uses made of the product, and over the conditions under which the product is used;

(4) To recognize that under the circumstances described in division (C)(3) of this section, it is more appropriate for the party or parties who have had control over the product during the intervening time period to be responsible for any harm caused by the product;

(5) To recognize that, more than ten years after a product has been delivered, it is very difficult for a manufacturer or supplier to locate reliable evidence and witnesses regarding the design, production, or marketing of the product, thus severely disadvantaging manufacturers or suppliers in their efforts to defend actions based on a product liability claim;

(6) To recognize the inappropriateness of applying current legal and technological standards to products manufactured many years prior to the commencement of an action based on a product liability claim;

(7) To recognize that a statute of repose for product liability claims would enhance the competitiveness of Ohio manufacturers by reducing their exposure to disruptive and protracted liability with respect to products long out of their control, by increasing finality in commercial transactions, and by allowing manufacturers to conduct their affairs with increased certainty;

(8) To declare that division (D)(2) of *section 2125.02* and division (C) of *section 2305.10 of the Revised Code*, as enacted by this act, strike a rational balance between the rights of prospective claimants and the rights of product manufacturers and suppliers and to declare that the ten-year statutes of repose prescribed in those sections are rational periods of repose intended to preclude the problems of stale litigation but not to affect civil actions against those in actual control and possession of a product at the time that the product causes an injury to real or personal property, bodily injury, or wrongful death[.]

Amendment Notes

151 v S 17, effective August 3, 2006, inserted (E) and redesignated the remaining subsections accordingly; in present (G), substituted “April 7, 2005” for “the effective date of this amendment”; and corrected internal references.

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Trial court erred in failing to apply the tolling provision of *R.C. 2305.15(A)* to a motor vehicle passenger's negligence claim against the driver during the time the driver was absent from Ohio. The driver moved to Nevada because a woman he was dating lived there, and he was not engaged in commerce so as to implicate the Commerce Clause. *Dewine v. State Farm Ins. Co., 2020-Ohio-5517, 163 N.E.3d 614, 2020 Ohio App. LEXIS 4375 (Ohio Ct. App., Scioto County 2020)*.

Federal district court was required to reject defendant's argument that the statute of repose barred plaintiff's claims for statutory products liability, common law products liability, negligence, and common law breach of warranty where the Ohio Supreme Court stated, in response to the district court's certified question, that Ohio's ten year statute of repose, *R.C. 2305.10*, violated the retroactivity clause of the Ohio Constitution, *Ohio Const. art. II, § 28*, as applied to plaintiff's claim. *LeBeau v. Lembo Corp., 2008 U.S. Dist. LEXIS 85190 (N.D. Ohio Aug. 15, 2008)*.

R.C. 2305.10(C) and former R.C. 2305.10(F) (now R.C. 2305.10(G)), applying a ten-year statute of repose to a worker's products liability claim against the manufacturers of a machine allegedly causing the worker's injury, was not an unconstitutional taking, in violation of *Ohio Const. art. I, § 19*, because the statute of repose involved a cause of action that never accrued and thus was prevented from vesting once the ten-year repose period passed, so there was no property right, and there could be no taking. Groch v. GMC, 2008-Ohio-546, 117 Ohio St. 3d 192, 883 N.E.2d 377, 2008 Ohio LEXIS 391 (Ohio 2008).

R.C. 2305.10(C) and former R.C. 2305.10(F) (now R.C. 2305.10(G)), applying a ten-year statute of repose to a worker's products liability claim against the manufacturers of a machine allegedly causing the worker's injury, did not violate the "due course of law" guarantee of *Ohio Const. art. I, § 16* because, under a rational-basis review, (1) legislative findings made when the statute was enacted adequately demonstrated that the statutes bore a real and substantial relation to the public health, safety, morals, or general welfare of the public and were not unreasonable or arbitrary, and (2) an intensive reexamination of these findings was beyond the scope of judicial review. Groch v. GMC, 2008-Ohio-546, 117 Ohio St. 3d 192, 883 N.E.2d 377, 2008 Ohio LEXIS 391 (Ohio 2008).

R.C. 2305.10(C) and former R.C. 2305.10(F) (now R.C. 2305.10(G)), applying a ten-year statute of repose to a worker's products liability claim against the manufacturers of a machine allegedly causing the worker's injury, did not violate the provision of *Ohio Const. art. I, § 16* guaranteeing that "all courts shall be open to every person with a right to a remedy for injury to his person, property or reputation, with the opportunity for such remedy being granted at a meaningful time and in a meaningful manner" because R.C. 2305.10(C) potentially barred the worker's suit before the worker's cause of action arose, as the statute could prevent a claim from ever vesting if an alleged injury-producing product was delivered to an end user more than ten years before an injury, so the worker's cause of action never accrued and, thus, never became a vested right to which *Ohio Const. art. I, § 16* could apply. Groch v. GMC, 2008-Ohio-546, 117 Ohio St. 3d 192, 883 N.E.2d 377, 2008 Ohio LEXIS 391 (Ohio 2008).

Am Sub. S.B. 80, Gen. Assem. (Ohio 2004) (S.B. 80), enacting amendments to R.C. 2305.10 which created a ten-year statute of repose in products liability cases, under former R.C. 2305.10(F) (now R.C. 2305.10(G)) and R.C. 2305.10(C), barring a worker's products liability claim against the manufacturers of a machine allegedly causing the worker's injury, did not violate the one-subject rule of *Ohio Const. art. II, § 15(D)* because, while S.B. 80 contained a considerable number of provisions, the bill's core, concerning amendments to the state's tort law, was sufficiently unified to comply with the one-subject rule, and the products-liability statute of repose was part of that core subject, so even if S.B. 80 contained provisions so unrelated to the bill's primary subject as to violate the one-subject rule, the unrelated provisions would be severed and the core provisions would be retained intact, and R.C. 2305.10(C) and former R.C. 2305.10(F) would not be affected. Groch v. GMC, 2008-Ohio-546, 117 Ohio St. 3d 192, 883 N.E.2d 377, 2008 Ohio LEXIS 391 (Ohio 2008).

Application of a ten-year statute of repose in former R.C. 2305.10(F) (now R.C. 2305.10(G)) to bar a worker's products liability claim against the manufacturers of a machine allegedly causing the worker's injury, was unconstitutional under Ohio Const. art. II, § 28, as applied, because the worker's claim accrued 34 days before the statute was enacted, so the worker had a vested right which was unconstitutionally impaired by the statute's

retroactive application, as it was unreasonable to require the worker to file suit within 34 days, and the worker filed suit within two years of the injury, which was a reasonable limitations period for the worker's claim. *Groch v. GMC, 2008-Ohio-546, 117 Ohio St. 3d 192, 883 N.E.2d 377, 2008 Ohio LEXIS 391 (Ohio 2008)*.

Statutes of repose infringe on the open courts, right to remedy and due course of law provisions of *Ohio Const. art I, § 16*: *State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 1999-Ohio-123, 86 Ohio St. 3d 451, 715 N.E.2d 1062, 1999 Ohio LEXIS 2580 (Ohio 1999)*.

Amended Substitute H.B. No. 350 violates the one-subject provision of *Ohio Const. art II, § 15(D)* and is unconstitutional in toto: *State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 1999-Ohio-123, 86 Ohio St. 3d 451, 715 N.E.2d 1062, 1999 Ohio LEXIS 2580 (Ohio 1999)*.

This section is remedial in nature and is not within the constitutional inhibition against retroactive laws: *Smith v. New York C. R. Co., 122 Ohio St. 45, 170 N.E. 637, 8 Ohio Law Abs. 192, 1930 Ohio LEXIS 307 (Ohio 1930)*.

Generally

District court correctly found that a winery's negligence action against the consultants to the glassmaker which manufactured the winery's bottles was barred by the applicable two-year statute of limitations under *R.C. 2305.10(A)*. By 1998, or, at the latest, 1999, the winery's majority shareholder had enough information about the consultant's role in a defective bottle problem that any cause of action against the consultants had accrued, the two-year statute of limitations period had begun to run, and, at the latest, it expired in 2001; because the winery's agreement to toll the limitations period in 2004 fell outside the two-year period, the negligence claim was time-barred. *Twee Jonge Gezellen, Ltd. v. Owens-Illinois, Inc., 238 Fed. Appx. 159, 2007 FED App. 0531N, 2007 U.S. App. LEXIS 18257 (6th Cir. Ohio 2007)*.

Accountant negligence

Claims of accountant negligence are governed by the four-year statute of limitations for general negligence claims found in *R.C. 2305.09(D)*, not by the two-year period for bodily injury or injury to personal property set forth in *R.C. 2305.10*, or by the one-year limitations period for professional malpractice claims in *R.C. 2305.11(A)*: *Investors REIT One v. Jacobs, 46 Ohio St. 3d 176, 546 N.E.2d 206, 1989 Ohio LEXIS 277 (Ohio 1989)*.

Accrual of action

Customer's cause of action against an auto repair shop accrued on January 5, 2016, rather than in August 2018 when he "discovered" the extent of the alleged damage because the customer was aware of the alleged vandalism

to his vehicle and the shop's role in the injury on January 5th. *Wolff v. Dunning Motor Sales, 2021-Ohio-740, 2021 Ohio App. LEXIS 752 (Ohio Ct. App., Guernsey County 2021)*.

Appellant's intentional tort claims were time-barred under the two-year statute of limitations, as the October 2013 denial of his workers' compensation claim clearly informed him that he was being denied workers' compensation benefits and commenced the running of the statute of limitations for any claim based on such denial, and the "under investigation" language included in the denial did not diminish the definite and unreserved rejection language. *Tchankpa v. Ascena Retail Grp., Inc., 2020-Ohio-3291, 2020 Ohio App. LEXIS 2220 (Ohio Ct. App., Franklin County 2020)*.

Purchaser's claims were barred by the two-year statute of limitations because the purchaser had until June 2013 to file its complaint against a manufacturer, but it did not file the complaint until September 2013; the purchaser's claims accrued not later than June 2011, the date the second engine failed, i.e. when the injury or loss occurred, and there was no evidence that the manufacturer had any involvement with repairs or installations after November 2010. *Caterpillar Fin. Servs. Corp. v. Harold Tatman & Son's Enters., 2019-Ohio-2110, 137 N.E.3d 512, 2019 Ohio App. LEXIS 2188 (Ohio Ct. App., Ross County 2019)*.

Mother's claims of vandalism, desecration, negligence, and conversion against a village, arising from the alleged misplacement of the remains of the mother's deceased child in a cemetery the village operated, were timely filed because the claims accrued in the summer of 2009 when the mother was informed that there was no record of her child's burial plot, and the complaint was filed on March 26, 2010, within the two year statute of limitations. *McDonald v. Vill. of Corning, 2015-Ohio-3002, 2015 Ohio App. LEXIS 2912 (Ohio Ct. App., Perry County 2015)*.

Trial court erred when it granted a city's motion and dismissed a *42 U.S.C.S. § 1983* action on the basis of the statute of limitations under *R.C. 2305.10* because a tax certificate of liens buyer and its assignee need not have known that their injury was proximately caused by the city's demolition of a building, pursuant to *R.C. 715.26(B)*, on the real property which they acquired, While the postal return receipts that were filed in a foreclosure action should have put the buyer and its assignee on notice that the building on their property might no longer exist, reasonable minds could have concluded that they would not thereby also have known that their injury was proximately caused by the city's demolition of the building, the foundation of the wrongful conduct that was alleged, as they alleged that the city did not provide them with the required statutory notice before the demolition. *Am. Tax Funding, LLC v. City of Miamisburg, 2011-Ohio-4161, 2011 Ohio App. LEXIS 3490 (Ohio Ct. App., Montgomery County 2011)*.

Motion to dismiss for failure to state a claim under Civ.R. 12(B)(6) was properly granted in an action apparently alleging negligence, personal injury, and violations under *42 U.S.C.S. § 1983* because the two-year statute of limitations had expired. A tasering incident occurred in 2004, but an injured party did not discover taser prongs in his abdomen until 2008. *Dublin v. Bansek, 2010-Ohio-2372, 2010 Ohio App. LEXIS 1939 (Ohio Ct. App., Franklin County 2010)*.

Constitutional claims asserted by two adult businesses in connection with the denial of a permit to operate an adult store were barred by the two-year statute of limitations set forth in *R.C. 2305.10(A)* as the claim accrued when the zoning board of appeals issued a final order denying the permit, which was approximately 27 months before the complaint was filed. *A to Z, Inc. v. City of Cleveland, 281 Fed. Appx. 458, 2008 FED App. 0337N, 2008 U.S. App. LEXIS 12872 (6th Cir. Ohio 2008)*.

Trial court properly granted a motorcycle dealership's motion under Civ.R. 12(B)(6) to dismiss a motorcyclist's products liability, negligence, and breach of warranty action, arising from an accident that allegedly resulted from an electrical malfunction of the motorcycle, as the claim was barred by the two-year limitations period of *R.C. 2305.10* and the discovery rule was inapplicable because the injury was not latent and the motorcyclist was aware that it was caused by a potential problem with the motorcycle, although he did not receive a recall notice that apprised him of the electrical malfunction until after the two-year period had expired; as the initial action was not timely filed, the fact that the initial complaint was voluntarily dismissed and then a new complaint was refiled within the one-year period was not within the savings statute under *R.C. 2305.19*, as that was only applicable where the initial action was timely filed. *Baxley v. Harley-Davidson Motor Co., 2007-Ohio-3678, 172 Ohio App. 3d 517, 875 N.E.2d 989, 2007 Ohio App. LEXIS 3353 (Ohio Ct. App., Hamilton County 2007)*.

R.C. 2305.10 sets forth a two-year statute of limitations for personal injury actions, and personal injury claims arising from a motor vehicle accident accrue on the day of accident, and the statute of limitations for such claims expires on the two-year anniversary date of the incident. *Combs v. Spence, 2007-Ohio-2210, 2007 Ohio App. LEXIS 2067 (Ohio Ct. App., Licking County 2007)*.

When an alleged injured party claimed that a motorist's car struck the alleged injured party, the limitations period in *R.C. 2305.10(A)* began running on the date of the incident, and the fact that the alleged injured party's injury subsequently worsened, requiring him to seek medical attention, did not extend that period because it began running from the date of the accident, rather than from the date the alleged injured party sought medical attention. *Combs v. Spence, 2007-Ohio-2210, 2007 Ohio App. LEXIS 2067 (Ohio Ct. App., Licking County 2007)*.

Summary judgment was properly denied because the trial court correctly found that the statute of limitations did not begin to run until the tenant discovered the cause of her illness to be contaminated well water. *Spidel v. Ross, 2006-Ohio-6718, 2006 Ohio App. LEXIS 6652 (Ohio Ct. App., Ashland County 2006)*.

Appellant's product liability claim against a manufacturer was properly dismissed on summary judgment because the suit was not filed within two years of the injury, as required by *R.C. 2305.10*. The discovery rule did not apply because appellant's injury was not latent; rather, the injury manifested itself immediately. *Flynn v. Bd. of Trs., 2006-Ohio-6622, 2006 Ohio App. LEXIS 6546 (Ohio Ct. App., Hamilton County 2006)*.

Where the pleadings clearly indicated plaintiffs were aware of their alleged injuries during the course of the 2001 probate case, the statute of limitations on any *42 U.S.C.S. § 1983* claim began to run in 2001 when the plaintiffs knew or should have known of the alleged injury which forms the basis for their claims and had long since passed

by the time of their 26 September 2005 pleading before the Court. *Wozniak v. Corrigan, 2006 U.S. Dist. LEXIS 28923 (N.D. Ohio May 12, 2006)*.

Where the pleadings clearly indicated plaintiffs were aware of their alleged injuries during the course of the 2001 probate case, the statute of limitations on any *42 U.S.C.S. § 1983* claim began to run in 2001 when the plaintiffs knew or should have known of the alleged injury which forms the basis for their claims and had long since passed by the time of their 26 September 2005 pleading before the Court. *Wozniak v. Corrigan, 2006 U.S. Dist. LEXIS 28923 (N.D. Ohio May 12, 2006)*.

Where plaintiff driver filed a timely negligence action against defendant driver pursuant to *R.C. 2305.10*, arising out of a car accident, and defendant was deceased at the time of filing, plaintiff's voluntary dismissal of that action without having attempted to substitute the estate of the decedent and then serve it, pursuant to Civ.R. 3(A), made the savings statute, *R.C. 2305.19*, inapplicable to his subsequently filed action; as the second action that was filed was beyond the statutory time period and the necessary attempts at substitution and service had not been made in a timely fashion previously, the action was barred and the trial court's grant of summary judgment dismissal of the action was proper. *Korn v. Mackey, 2005-Ohio-2768, 2005 Ohio App. LEXIS 2609 (Ohio Ct. App., Montgomery County 2005)*.

Although, according to Civ.R. 6(A), the accrual date for statute of limitations purposes began the day after the accident, pursuant to *R.C. 2305.10*, the statute of limitations expired on the two-year anniversary date of the incident; therefore, because the final filing date was the day before the injured party's action was filed, the trial court did not err in dismissing the claim on statute of limitations grounds. *Thomas v. Galinsky, 2004-Ohio-2789, 2004 Ohio App. LEXIS 2465 (Ohio Ct. App., Geauga County 2004)*.

Action construed

Customer's complaint stated a claim for damage to personal property, subject to a two-year limitations period, rather than a claim for fraud because the complaint did not contain a reference to a false representation, when it was made, who made it, or the consequences of the false representation. *Wolff v. Dunning Motor Sales, 2021-Ohio-740, 2021 Ohio App. LEXIS 752 (Ohio Ct. App., Guernsey County 2021)*.

The phrase "an action," as contained in this section refers to the cause of action, and thus has reference to the wrong committed rather than the remedy to redress such wrong: *Levin v. Bourne, 117 Ohio App. 269, 24 Ohio Op. 2d 63, 192 N.E.2d 114, 1962 Ohio App. LEXIS 718 (Ohio Ct. App., Summit County 1962)*.

An action is defined as an ordinary proceeding in a court of justice, involving process, pleadings, ending in a judgment, and by statutory definition process is an essential part of an action: *Baramore v. Washing, 160 N.E.2d 432, 80 Ohio Law Abs. 518, 1959 Ohio Misc. LEXIS 346 (Ohio C.P. 1959)*.

Amendment of complaint

Purchaser's claims were barred by the two-year statute of limitations, and because the purchaser's failure to name the manufacturer in their original third-party complaint was not the result of a mistake concerning the identity of the proper party, the amended third-party complaint did not relate back to the original; the failure to include the manufacturer was not because of mistaken identity or misnomer since the purchaser had always known who the manufacturer was. *Caterpillar Fin. Servs. Corp. v. Harold Tatman & Son's Enters., 2019-Ohio-2110, 137 N.E.3d 512, 2019 Ohio App. LEXIS 2188 (Ohio Ct. App., Ross County 2019)*.

It was error to deny an insurer's Civ.R. 15(C) motion to add a business owner's limited liability company (LLC) as a defendant in a suit against the owner because (1) the owner was timely sued, under *R.C. 2305.10*, (2) that complaint was timely re-filed, under *R.C. 2305.19(A)*, (3) the amendment related back to the first complaint, (4) the owner, served in the first suit, owned the LLC with the owner's son, so the son knew of the suit, (5) the owner and the son knew or should have known that, but for a pleading error, the LLC would have been sued, and (6) the LLC and the LLC's members were not prejudiced. *Robinson v. Spurlock, 2012-Ohio-1510, 2012 Ohio App. LEXIS 1324 (Ohio Ct. App., Jackson County 2012)*.

Although the claims an aunt made against a foundation that issued a bracelet that the aunt asserted caused an injury to her eye arose out of the same occurrence as set forth in an original complaint against a nephew who shot the bracelet at the aunt, the claim against the foundation did not relate back to the original date of the filing of the complaint because the foundation did not receive notice of the institution of the action within the two year statute of limitations stated in *R.C. 2305.10(A)*. *Karnofel v. Beck, 2008-Ohio-6874, 2008 Ohio App. LEXIS 5742 (Ohio Ct. App., Trumbull County 2008)*.

Because the victim was aware of the construction company's identity and knew that it had installed the cabinets (that had fallen on the victim) before the limitations period had run, the victim could not have used Civ.R. 15(C) to bring in the construction company as a direct defendant. *Monahan v. Duke Realty Corp., 2008-Ohio-1113, 2008 Ohio App. LEXIS 974 (Ohio Ct. App., Hamilton County 2008)*.

As plaintiffs filed a multi-count tort action against assorted "John Doe" defendants and they thereafter filed an amended complaint pursuant to Civ.R. 15(D) to actually name two defendants in place of the John Doe designation, the certified mail service on them was sufficient and timely, such that a trial court's dismissal under Civ.R. 12(B)(6) due to the action being time-barred was error; the original complaint was filed within the time limitations period of *R.C. 2305.10*, the amended complaint was filed within the one-year period of Civ.R. 3(A), which was the equivalent of a voluntary dismissal and refiling that made the savings statute, *R.C. 2305.19(A)*, applicable, and the service on defendants was timely made within the next one-year period. *LaNeve v. Atlas Recycling, Inc., 2007-Ohio-2856, 172 Ohio App. 3d 44, 872 N.E.2d 1277, 2007 Ohio App. LEXIS 2615 (Ohio Ct. App., Trumbull County 2007)*, rev'd, *2008-Ohio-3921, 119 Ohio St. 3d 324, 894 N.E.2d 25, 2008 Ohio LEXIS 2240 (Ohio 2008)*.

In a case in federal district court, the two year limitations period, set forth in *R.C. 2305.10*, set forth the applicable statute of limitations, but plaintiff was not entitled to a relation back of his amended complaint under *Fed. R. Civ. P. 15(c)(1)* because *R.C. 2305.10* did not contain a specific provision for the relation back of claims and the relation back provision in the Ohio Rules of Civil Procedure did not apply. *Oros v. Hull & Assocs., 217 F.R.D. 401, 2003 U.S. Dist. LEXIS 15349 (N.D. Ohio 2003)*.

For purposes of *R.C. 2305.10*, current claims relating to impact of DES on plaintiff's ability to safely bear children in the future do not relate back to an amended complaint filed in an earlier suit which was dismissed with prejudice: *Grover v. Eli Lilly & Co., 896 F. Supp. 725, 1995 U.S. Dist. LEXIS 16602 (N.D. Ohio 1995)*.

An amended complaint to add a new party defendant in an asbestos-related personal injury action relates back to the date the motion for leave to file the amended complaint was filed; if the motion for leave is filed outside the two-year statute of limitations, the amended complaint is untimely: *Chaddock v. Johns-Manville Sales Corp., 577 F. Supp. 937, 1984 U.S. Dist. LEXIS 20444 (S.D. Ohio 1984)*.

Where an insurer of a person injured by a defendant brings a civil action in its own name, it is error for a trial court to allow an amendment to the petition substituting the injured party in the place of such insurer after the statute of limitations regarding that particular action and injury has run: *Motorist Mut. Ins. Co. v. Cook, 31 Ohio App. 2d 1, 60 Ohio Op. 2d 25, 285 N.E.2d 389, 1971 Ohio App. LEXIS 439 (Ohio Ct. App., Hamilton County 1971)*.

In a negligence action for the recovery of damages for personal injuries, the plaintiff has a right to file a supplemental petition under *R.C. 2309.63* [see now Civ.R. 15(E)], alleging facts material to the case which occur after the filing of his original petition, after the statute of limitations has run, after answer is filed and before trial, where the facts alleged relate to the cause of action set forth in the original petition, are in aid thereof and do not change the original cause of action or the nature of the relief sought: *House v. Moomaw, 120 Ohio App. 23, 28 Ohio Op. 2d 211, 201 N.E.2d 66, 1964 Ohio App. LEXIS 565 (Ohio Ct. App., Montgomery County 1964)*.

Applicability

Complaint brought by an accident victim against a business owner when the victim was injured on the premises of the business owner while making a delivery was time barred because the two-year statute of limitations for bodily injury applied and barred the claim. The six-year statute of limitations was inapplicable as the common law already provided a cause of action in negligence for injured parties such as the accident victim. *Jones v. Terminal Ready-Mix, Inc., 2021-Ohio-2164, 2021 Ohio App. LEXIS 2138 (Ohio Ct. App., Lorain County 2021)*.

Purchaser's had two years of when the loss or injury to person or property occurred to bring its claims because its claims for breach of implied warranty in tort and negligence were governed by the two-year statute of limitations. *Caterpillar Fin. Servs. Corp. v. Harold Tatman & Son's Enters., 2019-Ohio-2110, 137 N.E.3d 512, 2019 Ohio App. LEXIS 2188 (Ohio Ct. App., Ross County 2019)*.

Because *Ohio Rev. Code Ann. § 2305.10* governed the limitations period for *29 U.S.C.S. § 794* claims, Ohio's personal injury actions also governed the limitations period for claims in Ohio arising under Title II of the Americans with Disabilities Act (ADA). Because *Ohio Rev. Code Ann. § 4112.022* was not modeled after the ADA and did not set forth its own statute of limitations, the appropriate statute of limitations for a Title II claim was the two-year limitations period applicable to personal injury actions in Ohio. *McCormick v. Miami Univ., 693 F.3d 654, 2012 FED App. 0317P, 2012 U.S. App. LEXIS 18950 (6th Cir. Ohio 2012)*.

Two-year statute of limitations for personal injury actions, *R.C. 2305.10*, governs *42 U.S.C.S. § 1983* actions filed in the courts of Ohio. *Am. Tax Funding, LLC v. City of Miamisburg, 2011-Ohio-4161, 2011 Ohio App. LEXIS 3490 (Ohio Ct. App., Montgomery County 2011)*.

Parent's lawsuit against the driver of an automobile to recover a child's medical expenses was filed within the applicable four-year statute of limitations in *R.C. 2305.09(D)*, rather than the two-year statute of limitations in *R.C. 2305.10(A)*. *Walker v. Hodge, 2010-Ohio-1989, 2010 Ohio App. LEXIS 1658 (Ohio Ct. App., Hamilton County 2010)*.

When a lessor sued a lessee for breach of contract based on the lessee's failure to repair damage to leased premises, the suit did not sound in negligence, causing the two-year limitations period in *R.C. 2305.10* to apply, because (1) that statute applied only to suits for products liability, bodily injury, or injury to personal property, and (2) the essence of the action was not a negligent breach of duty, as the lessor relied on a contract clause requiring the lessee to repair any damages the lessee caused, regardless of negligence, but a breach of a contractual duty, so the 15-year limitations period in *R.C. 2305.06* applied. *Commonwealth Real Estate Investors v. Paolone, 2010-Ohio-751, 2010 Ohio App. LEXIS 619 (Ohio Ct. App., Mahoning County 2010)*.

Trial court did not use the incorrect statute of limitations in a case alleging child sexual abuse because *R.C. 2305.111(C)* did not apply; under prior law, the statute of limitations ran on a victim's claim one year after she turned 18, and this date was prior to the effective date of *R.C. 2305.111(C)*; moreover, *R.C. 2305.10(G)* did not aid the victim because it was also inapplicable. Plain error standard of review applied on this issue since it was not raised before the trial court. *Swartz v. Estate of Karder, 2009-Ohio-6790, 2009 Ohio App. LEXIS 5696 (Ohio Ct. App., Stark County 2009)*.

Trial court erred when it granted summary judgment to a driver and it dismissed an employer's cross-claim against the driver, seeking subrogation arising from the driver's collision with an employee, as the subrogation claim was governed by the six-year limitations period of *R.C. 2305.07* rather than the two-year personal injury period under *R.C. 2305.10(D)*; the employer's right to reimbursement from the driver was non-existent but for the workers' compensation subrogation statute, *R.C. 4123.931*, such that the claim was one based upon a liability created by statute. *Corn v. Whitmere, 2009-Ohio-2737, 183 Ohio App. 3d 204, 916 N.E.2d 838, 2009 Ohio App. LEXIS 2314 (Ohio Ct. App., Greene County 2009)*.

As colon cancer did not constitute a "physical impairment" for purposes of *R.C. 2307.92(A)* because it did not fit within any of the three categories listed in *R.C. 2307.91(V)*, cancer victims' claims were not within the "bodily injury caused by exposure to asbestos" language of *R.C. 2307.92(A)* and that provision was inapplicable to the personal injury claims; as the provisions in *§ 2307.92* did not apply to the colon cancer claims, the definition of "competent medical authority" contained in *R.C. 2307.91(Z)* did not apply, and the fact that medical opinions of non-treating physicians were submitted by the cancer victims to show the causal connection between the cancer and the asbestos exposure was not insufficient for purposes of *R.C. 2305.10(B)(5)*. *Nichols v. A.W. Chesterton Co., 2007-Ohio-3828, 172 Ohio App. 3d 735, 876 N.E.2d 1269, 2007 Ohio App. LEXIS 3500 (Ohio Ct. App., Butler County 2007)*.

Issue of fact existed as to whether a boyfriend's act of pushing open a car door and pinning the ex-husband of the boyfriend's girlfriend was intentional because, while three of the four versions of how the incident occurred indicated that the boyfriend's act was intentional, the affidavit of the ex-husband's girlfriend indicated that the boyfriend, rushing over to get photographs from the ex-husband, carelessly or accidentally ran into the open car door pushing it into the ex-husband. Thus, an issue of fact existed as to whether the limitations period in *R.C. 2305.111* or *R.C. 2305.10(A)* applied. *Walker v. Bunch, 2006-Ohio-4680, 2006 Ohio App. LEXIS 4603 (Ohio Ct. App., Mahoning County 2006)*.

Action by a home owner and her insurer, as subrogee, against a realty company and a real estate agent for their negligence in failing to act on notices to them that the gas was being turned off at the owner's property did not involve the two-year limitations period of *R.C. 2305.10*, as the action did not involve bodily injury or injury to personal property; rather, as the claim was made based on water damage and broken pipes at the home due to the failure to have the gas restored to the property, the applicable limitations statute was the four-year period of *R.C. 2305.09(D)*. *State Farm Fire & Cas. Co. v. Century 21 Arrow Realty, 2006-Ohio-3967, 2006 Ohio App. LEXIS 3955 (Ohio Ct. App., Cuyahoga County 2006)*.

Suit brought by a patient against a doctor's office and a doctor, alleging that the office's nurse was negligent in leaving an examination room after giving the patient a vaccination, was subject to the one-year statute of limitations for medical malpractice actions found in former *R.C. 2305.11*, not the two-year statute of limitations in *R.C. 2305.10(A)* applicable to ordinary negligence actions, because the claim was a medical claim, as that term was defined in former *R.C. 2305.11(D)(3)*, in that it arose out of the medical care of the patient. Since the suit was not filed within one year of the date that it accrued, the trial court properly granted summary judgment to the office and the doctor. *Hill v. Primed Pediatrics, 2006-Ohio-2405, 2006 Ohio App. LEXIS 2281 (Ohio Ct. App., Montgomery County 2006)*.

Suit brought by a patient against a doctor's office and a doctor, alleging that the office's nurse was negligent in leaving an examination room after giving the patient a vaccination, was subject to the one-year statute of limitations for medical malpractice actions found in former *R.C. 2305.11*, not the two-year statute of limitations in *R.C. 2305.10(A)* applicable to ordinary negligence actions, because the claim was a medical claim, as that term was defined in former *R.C. 2305.11(D)(3)*, in that it arose out of the medical care of the patient. Since the suit was not

filed within one year of the date that it accrued, the trial court properly granted summary judgment to the office and the doctor. *Hill v. Primed Pediatrics, 2006-Ohio-2405, 2006 Ohio App. LEXIS 2281 (Ohio Ct. App., Montgomery County 2006)*.

If the damages for which an action seeks recovery consist of personal injury or damage to personal property, the statute which specifically refers to such injury or damage is applicable regardless of whether the duty breached was imposed by contract or common law: *Sears, Roebuck & Co. v. Cleveland Trust Co., 355 F.2d 705, 7 Ohio Misc. 279, 36 Ohio Op. 2d 32, 1966 U.S. App. LEXIS 7235 (6th Cir. Ohio 1966)*.

Arbitration

An action to compel arbitration of a claim under an uninsured motorist endorsement to an automobile insurance policy is not one for bodily injury and so not barred by *R.C. 2305.10*, although the demand for arbitration was made more than two years after the accident: *Schulz v. Allstate Ins. Co., 17 Ohio Misc. 83, 46 Ohio Op. 2d 109, 244 N.E.2d 546, 1968 Ohio Misc. LEXIS 233 (Ohio C.P. 1968)*.

Architect

Accident victim, who alleged that the victim slipped and fell on an unnatural and improper accumulation of ice on a driveway that was improperly designed by an architectural firm, was barred from pursuing a claim against the architectural firm because the ten-year period of repose relevant to the design work which the architectural firm performed had expired. *Kraft v. OMCO Bldg., LLC, 2019-Ohio-621, 2019 Ohio App. LEXIS 651 (Ohio Ct. App., Franklin County 2019)*.

Asbestos claims generally

Protective clothing user's asbestos-related claim against a clothing manufacturer survived a dismissal motion pursuant to *R.C. 2307.93(A)(3)(a)*, as the claim was sufficiently proved under prior law pursuant to *R.C. 2307.93(A)(3)(b)* and *2305.10*, and retroactive application of Am. Sub. H.B. 292, Gen. Assem. (Ohio 2004) to the user's claim would have impaired it, in violation of *Ohio Const. art. II, § 28*. *Cross v. A-Best Prods. Co., 2009-Ohio-3079, 2009 Ohio App. LEXIS 2589 (Ohio Ct. App., Cuyahoga County 2009)*, rev'd, *2010-Ohio-121, 124 Ohio St. 3d 239, 921 N.E.2d 237, 2010 Ohio LEXIS 40 (Ohio 2010)*.

"Competent medical authority," as defined in *R.C. 2307.91(Z)*, applies merely to those medical doctors who provide a diagnosis for purposes of establishing prima facie evidence of an exposed person's physical impairment that meets the requirements of *R.C. 2307.92*. Since *R.C. 2307.92* did not apply to plaintiffs' colon cancer claims, *R.C. 2307.91(Z)* also did not apply: *Nichols v. A.W. Chesterton Co., 2007-Ohio-3828, 172 Ohio App. 3d 735, 876 N.E.2d 1269, 2007 Ohio App. LEXIS 3500 (Ohio Ct. App., Butler County 2007)*.

Asbestos exposure

Trial court erred when it ruled that as used in *R.C. 2305.10*, "competent medical authority" should be defined by *R.C. 2307.91(Z)* because by the plain terms of *§ 2307.91(Z)*, it applied only to *R.C. 2307.92*. *Penn v. A-Best Prods. Co., 2007-Ohio-7145, 2007 Ohio App. LEXIS 6257 (Ohio Ct. App., Franklin County 2007)*.

By the plain terms of *R.C. 2307.91(Z)*, the statute does not supply the definition for "competent medical authority" as it is used in *R.C. 2305.10(B)*. *Penn v. A-Best Prods. Co., 2007-Ohio-7145, 2007 Ohio App. LEXIS 6257 (Ohio Ct. App., Franklin County 2007)*.

R.C. 2305.10(B)(5) uses the conjunction "or." The statute's use of the disjunctive "or" indicates that the two phrases on either side of the term were not intended to have the same meaning and that if the circumstances satisfy either one, then an asbestos related cause of action has accrued. *Penn v. A-Best Prods. Co., 2007-Ohio-7145, 2007 Ohio App. LEXIS 6257 (Ohio Ct. App., Franklin County 2007)*.

Trial court erred in ruling that asbestos related colon and laryngeal cancer claims could not accrue until a competent medical authority informed four employees that their injuries were related to asbestos exposure; *R.C. 2305.10(B)(5)* provided that the claims could also accrue on the date the employees should have known that their injuries were related to asbestos exposure. *Penn v. A-Best Prods. Co., 2007-Ohio-7145, 2007 Ohio App. LEXIS 6257 (Ohio Ct. App., Franklin County 2007)*.

As the definition of "competent medical authority" under *R.C. 2307.91(Z)* was limited to whether a doctor was a competent medical authority for purposes of establishing a prima facie case under *R.C. 2307.92*, the trial court erred in using that definition to determine whether an asbestos-injury claimant's cause of action accrued under *R.C. 2305.10*. *Wagner v. Anchor Packing Co., 2006-Ohio-7097, 2006 Ohio App. LEXIS 7050 (Ohio Ct. App., Lawrence County 2006)*.

Administrative dismissal under *R.C. 2307.93(C)* of an asbestos-injury claimant's complaint, seeking recovery for his asbestosis, was error, as application of H.B. 292, Gen. Assem. (Ohio 2004) (codified at R.C. ch. 2307) to the claims was unconstitutionally retroactive under *Ohio Const. art. II, § 28* in that the substantive changes in the law, rather than mere remedial requirements, imposed a new, more difficult standard for maintaining an asbestosis claim as opposed to the less stringent requirements under the common law; compliance with the "competent medical authority" requirement under *R.C. 2307.91(Z)* and *2305.10* also imposed a substantive change. *Wagner v. Anchor Packing Co., 2006-Ohio-7097, 2006 Ohio App. LEXIS 7050 (Ohio Ct. App., Lawrence County 2006)*.

H.B. 292, Gen. Assem. (Ohio 2004) (codified at R.C. ch. 2307) could not be constitutionally applied retroactively under *Ohio Const. art. II, § 28* to asbestos-related injury claims by a decedent's administratrix who had filed her action prior to the effective date of R.C. ch. 2307, as application thereof would remove her potentially viable common law claims by imposing a new, more difficult statutory standard upon her ability to maintain the claims

under *R.C. 2307.92* and the changes were substantive rather than remedial; further, by purporting to change the definition of "competent medical authority" as used in *R.C. 2307.91(Z)* and *2305.10*, the legislation effects a substantive change in the meaning of that phrase. *Ackison v. Anchor Packing Co., 2006-Ohio-7099, 2006 Ohio App. LEXIS 7047 (Ohio Ct. App., Lawrence County 2006)*, rev'd, *2008-Ohio-5243, 120 Ohio St. 3d 228, 897 N.E.2d 1118, 2008 Ohio LEXIS 2784 (Ohio 2008)*.

Plaintiff's products liability claim against manufacturer for injury due to exposure to asbestos was barred under *R.C. 2305.10*; the claim accrued when the plaintiff's physician gave and discussed with him a report prepared by another physician describing findings of lung damage and inquiring if there was any asbestos exposure that would account for these findings: *Yung v. Raymark Industries, Inc., 789 F.2d 397, 1986 U.S. App. LEXIS 24717 (6th Cir. Ohio 1986)*.

Claims for insidious diseases caused by exposure to asbestos accrue under Ohio law when the disease has manifested. The discovery and other rules developed by the Supreme Court of Ohio in malpractice cases do not necessarily apply outside the area of malpractice: *Clutter v. Johns-Manville Sales Corp., 646 F.2d 1151, 22 Ohio Op. 3d 201, 1981 U.S. App. LEXIS 14565 (6th Cir. Ohio 1981)*.

Assault and battery

Summary judgment was proper where the statute of limitations for assault and battery barred the injured's first lawsuit and his failure to present a negligence claim in his complaint barred him from later asserting it or any other claim arising out of the incident. *Portis v. Greyhound Lines, Inc., 2003-Ohio-6044, 2003 Ohio App. LEXIS 5364 (Ohio Ct. App., Cuyahoga County 2003)*.

Where the essential character of an alleged tort is an intentional, offensive touching, the statute of limitations for assault and battery governs even if the touching is pled as an act of negligence: *Love v. Port Clinton, 37 Ohio St. 3d 98, 524 N.E.2d 166, 1988 Ohio LEXIS 177 (Ohio 1988)*.

Where, for his cause of action against another, a party alleges that the latter deliberately and maliciously struck and beat him, he has pleaded an action for assault and battery and must commence the action prior to the tolling of the one-year statute of limitation (*R.C. 2305.11*): *Dean v. Angelas, 24 Ohio St. 2d 99, 53 Ohio Op. 2d 282, 264 N.E.2d 911, 1970 Ohio LEXIS 344 (Ohio 1970)*.

Bailments

A bailment contract does not avoid the two-year limitation of *R.C. 2305.10* by asserting breach of contract as a cause of action where the basis of action is damage to personal property: *N & D, Inc. v. Harrod, 73 Ohio App. 3d 299, 596 N.E.2d 1136, 1991 Ohio App. LEXIS 1912 (Ohio Ct. App., Allen County 1991)*.

Where the essence of a bailor's complaint under a mutual benefit bailment contract is the bailee's failure to perform contractual duties rather than injury to bailed property, the action is governed by the contract statute of limitations in *R.C. 2305.06*: *Mills v. Liberty Moving & Storage, Inc., 29 Ohio App. 3d 90, 503 N.E.2d 199, 1985 Ohio App. LEXIS 10386 (Ohio Ct. App., Franklin County 1985)*.

A bailment contract does not avoid the two-year limitations of *R.C. 2305.10* by asserting breach of contract as a cause of action where the basis of action is damage to personal property: *Underwriters at Lloyd's under Policy No. LHO 10497 v. Peerless Storage Co., 404 F. Supp. 492, 1 Ohio Op. 3d 407, 1975 U.S. Dist. LEXIS 15090 (S.D. Ohio 1975)*, aff'd, *561 F.2d 20, 7 Ohio Op. 3d 463, 1977 U.S. App. LEXIS 11653 (6th Cir. Ohio 1977)*.

Bankruptcy

Statute of limitations was not tolled for an injured party's suit against a driver of a car and an owner, even though the injured party obtained a stay of the usit due to her bankruptcy, as the bankruptcy automatic stay only enjoined actions against the debtor; the injured party could have obtained an order of abandonment so that she could pursue her claims within the statute of limitations. *Pewitt v. Roberts, 2005-Ohio-4298, 2005 Ohio App. LEXIS 3914 (Ohio Ct. App., Cuyahoga County 2005)*.

If a bankruptcy petitioner files a personal injury action within the statute of limitations, and then an amended complaint is filed naming the trustee as a plaintiff after the statute of limitations has expired, the amended complaint relates back to the filing date of the complaint: *Young v. IBP, Inc., 2003-Ohio-3512, 124 Ohio Misc. 2d 31, 791 N.E.2d 1061, 2003 Ohio Misc. LEXIS 20 (Ohio C.P. 2003)*.

Bodily injury

Because the decedent's medical treatment did not include her use of a wheelchair to reach the dining area at appellees' facility, the trial court did not err by finding that the claim was not a "medical claim" within the meaning of the medical malpractice statute, and that the two-year limitation period pertaining to a cause for bodily injury governed the claim. *Eichenberger v. Woodlands Assisted Living Residence, LLC, 2014-Ohio-5354, 25 N.E.3d 355, 2014 Ohio App. LEXIS 5181 (Ohio Ct. App., Franklin County 2014)*.

Second driver's personal injury action was time-barred because the second driver voluntarily dismissed the original counterclaim against the first driver before the expiration of the statute of the limitations in *R.C. 2305.10* and not after, which made the second driver's case ineligible to receive the extended protection of the savings statute, *R.C. 2305.19*. *Lindsey v. Schuler, 2012-Ohio-3675, 2012 Ohio App. LEXIS 3241 (Ohio Ct. App., Mahoning County 2012)*.

Driver's third bodily injury suit (suit 3) was properly dismissed with prejudice as: (1) the driver took advantage of the Ohio Savings Statute, *R.C. 2305.19*, when she filed suit 2 at a time when the statute of limitations under *R.C.*

2305.10(A) had been expired for almost three years; (2) the filing of suit 3 occurred about seven years after the accident and almost five years after the statute of limitations had expired; (3) *R.C. 2305.19* stated that a plaintiff had the right to file a new action, not multiple actions; and (4) because the driver utilized the savings statute to file suit 2, she could not again take advantage of the savings statute to institute suit 3, which was filed well beyond the statute of limitations. *Hamrick v. Ramalia, 2012-Ohio-1953, 2012 Ohio App. LEXIS 1715 (Ohio Ct. App., Cuyahoga County 2012)*.

Alleged injured party's negligence action against a motorist was not timely commenced, under Civ.R. 3(A), because, after the alleged injured party's counsel was told that an attempt to serve the motorist by certified mail was unsuccessful, counsel did not attempt to serve the motorist within one year of the filing of the complaint, and the subsequent filing of an amended complaint, ten months after that one-year period, was not equivalent to refiling the first complaint because, by the time the amended complaint was filed, the alleged injured party could no longer dismiss and refile the case within the statute of limitations, so the alleged injured party did not have an additional year, under the savings statute, *R.C. 2305.19*, to refile the case. *Gibson v. Summers, 2008-Ohio-6995, 2008 Ohio App. LEXIS 5861 (Ohio Ct. App., Portage County 2008)*.

When a customer asserted claims for breach of contract and breach of warranty against a restaurant which allegedly sold the customer a hamburger containing a foreign substance, the claims were subject to the statute of limitations in *R.C. 2305.10*, instead of the statute of limitations regarding sales of goods in *R.C. 1302.98* because *R.C. 2305.10* specifically related to actions for bodily injury, which was the specific subject matter involved, so *§ 2305.10* controlled over a general statutory provision relating to breach of contract actions, and *§ 2305.10* controlled because the underlying nature of the customer's claims were for bodily injury. *Summers v. Max & Erma's Rest., Inc., 2008-Ohio-4156, 2008 Ohio App. LEXIS 3515 (Ohio Ct. App., Trumbull County 2008)*.

Statute of limitations applicable to a customer's claim against a restaurant under Ohio's Pure Food and Drug Act (Act), *R.C. 3715.01* et seq., was *R.C. 2305.10* because the Act did not create the customer's cause of action against the restaurant, even though the Act reduced the customer's burden of proof, since the claim existed independently of the Act, so *R.C. 2305.07* was not the applicable statute of limitations. *Summers v. Max & Erma's Rest., Inc., 2008-Ohio-4156, 2008 Ohio App. LEXIS 3515 (Ohio Ct. App., Trumbull County 2008)*.

When alleged injured parties sued a motorist, who died before he was sued, they did not commence or attempt to commence suit against his estate, pursuant to Civ.R. 3(A) or *R.C. 2305.17*, within the required limitations period in *R.C. 2305.10* because the estate was not substituted for the decedent and served within one year of the date the complaint was filed, so the saving statute in *R.C. 2305.19(A)* did not preserve their claim for personal injuries. *Wells v. Michael, 2006-Ohio-5871, 2006 Ohio App. LEXIS 5813 (Ohio Ct. App., Franklin County 2006)*.

In a personal injury action by appellants arising from a car accident, the trial court properly granted appellee's motion for dismissal, pursuant to Civ.R. 12(B)(6), and it denied appellants' motion for conversion of the motion to one for summary judgment, pursuant to Civ.R. 56, as the initial complaint was voluntarily dismissed by appellants, pursuant to Civ.R. 41(A), after the limitations period of *R.C. 2305.10* had run, the second complaint was not refiled

within one year, as required by *R.C. 2305.19(A)*, and *R.C. 2305.15(A)* was inapplicable to claims under *R.C. 2305.19(A)*; further, the trial court denied appellants' request for permission to conduct discovery to determine whether appellee was out of state during some of the period between the dismissal of the first action and the refiling of the second action, as such would not have saved their action. *Snyder v. Withrich, 2005-Ohio-4091, 2005 Ohio App. LEXIS 3730 (Ohio Ct. App., Wayne County 2005)*.

Where the powers of a municipal court were inadequate, neither *R.C. 2305.19* nor Civ.R. 41 applied; therefore, the common pleas court properly exercised jurisdiction when it found that the customers' various personal injury claims were barred by the statutes of limitations in *R.C. 2305.10*, *2305.09* and *1345.10(C)*. *Duckworth v. Burger King Corp., 2005-Ohio-294, 159 Ohio App. 3d 540, 824 N.E.2d 592, 2005 Ohio App. LEXIS 250 (Ohio Ct. App., Franklin County 2005)*.

"Bodily injury" within two years' limitation statute includes only such bodily injury, resulting from negligence, as is not embraced within one year's limitation for assault and battery and malpractice: *Arend v. Mylander, 39 Ohio App. 277, 177 N.E. 377, 10 Ohio Law Abs. 492, 1931 Ohio App. LEXIS 467 (Ohio Ct. App., Erie County 1931)*.

Car repairs, result of

The applicable statute of limitations was *R.C. 2305.10*, not *R.C. 1302.98*, where bodily injury allegedly resulted from improperly performed car repairs: *Mitchell v. Speedy Car X, 127 Ohio App. 3d 229, 712 N.E.2d 768, 1998 Ohio App. LEXIS 1457 (Ohio Ct. App., Summit County 1998)*.

Carriers

A shipper's counterclaim for damages sustained by the death en route of some of the birds shipped was based on an implied contract and was timely where brought within six years, even though it was not brought within the two-year limitations period applicable to injury to personal property: *Slick Airways, Inc. v. Reinert, 114 Ohio App. 124, 17 Ohio Op. 2d 455, 175 N.E.2d 844, 1961 Ohio App. LEXIS 640 (Ohio Ct. App., Hamilton County 1961)*.

Where a fare-paying passenger sustains bodily injury during his transportation by a common carrier of passengers and thereafter institutes an action against the carrier to recover damages for such injury and the results thereof based on a claimed breach of the implied contract for safe carriage, the two-year limitation for bringing an action prescribed by this section is controlling and not the six-year limitation contained in GC § 11222 (*R.C. 2305.07*) relating to an action on an implied contract: *Andrianos v. Community Traction Co., 155 Ohio St. 47, 44 Ohio Op. 72, 97 N.E.2d 549, 1951 Ohio LEXIS 534 (Ohio 1951)*.

Child abuse

Any claims that plaintiff, about forty years old, had against her mother's estate for abuse or neglect while she was a child were barred by whatever statute of limitations was applicable: *Benge v. Jones, 80 Ohio App. 3d 420, 609 N.E.2d 581, 1992 Ohio App. LEXIS 2855 (Ohio Ct. App., Franklin County 1992)*.

Civil rights

Inmate's appeal of an order dismissing without prejudice the amended complaint the inmate filed regarding the conditions of his confinement in a county jail failed because at the time the dismissal order was entered, the two-year statute of limitations in *R.C. 2305.10* had not yet run, and therefore, the dismissal order was not final and appealable. *White v. Unknown, 2010-Ohio-3031, 2010 Ohio App. LEXIS 2536 (Ohio Ct. App., Franklin County 2010)*.

Court dismissed the arrestee's *42 U.S.C.S. § 1983* claims against the unnamed police officers because the arrestee's continued failure to amend his complaint to name the officers fell outside the two-year statute of limitations of *R.C. 2305.10*, and he did not satisfy either the notice nor the relation back requirements of *Fed. R. Civ. P. 15(c)(3)*, as the officers received neither actual nor constructive notice. Any proposed amendment to change the John Does one through five to identified officers would have amounted to less than a mistake concerning identity and consequently could not relate back to his original complaint. *Dye v. City of Warren, 367 F. Supp. 2d 1175, 2005 U.S. Dist. LEXIS 7575 (N.D. Ohio 2005)*.

Civil rights, federal law

Suit by three biracial students alleging racial discrimination and harassment under § 1983 and Title VI of the Civil Rights Act of 1964, *42 U.S.C.S. § 2000d*, was timely under the two year limitations period because one student filed suit within two years of reaching majority, and the limitations period was tolled under *Ohio Rev. Code § 2305.16* for the two students who were minors *Brooks v. Skinner, 139 F. Supp. 3d 869, 2015 U.S. Dist. LEXIS 140546 (S.D. Ohio 2015)*.

Inmate's *42 U.S.C.S. § 1983* action was dismissed under *28 U.S.C.S. § 1915A* because his Eighth Amendment deliberate indifference claims based on the amputation of his leg were barred by the applicable two-year statute of limitations found in *R.C. 2305.10*, and the statute of limitations was not tolled by his imprisonment under *R.C. 2305.15(B)*, the negligence or inaction of his attorney, or the continuing violation doctrine. While the inmate's claims based on medical care he received after January 2010 were not time-barred, they failed to state a cause of action. *Wilder v. Collins, 2012 U.S. Dist. LEXIS 64231 (S.D. Ohio May 8, 2012)*.

Two year statute of limitations applied to a former Veterans' Administration (VA) doctor's Bivens action and acted to bar the doctor's claims against his former supervisor and the director of a VA facility as it was the doctor's complaint was filed more than two years after he was removed as a VA doctor. *Kanna v. Shinseki, 2012 U.S. Dist. LEXIS 47017 (S.D. Ohio Apr. 3, 2012)*.

In a case alleging that property was demolished without required notice, a federal civil rights claim was untimely under the two-year statute of limitations because the lawsuit was not filed until more than 2 years after the injury should have been known. There was reason to know that a structure had been demolished more than two years before the instant action was filed because five failures of service were received after service attempts at the property. *American Tax Funding LLC v. City of Miamisburg Ohio, 2011 Ohio Misc. LEXIS 787 (Ohio C.P. Jan. 19, 2011)*.

Husband's *42 U.S.C.S. § 1983* claims relating to his wife's suicide, which occurred after her release from jail, were time barred under the two-year limitations period under *R.C. 2305.10* because the causes of action accrued on the date of her release; that was the date the husband knew or had reason to know of the injury. *Garrett v. Belmont County Sheriff Dep't, 2011 U.S. Dist. LEXIS 18702 (S.D. Ohio Feb. 25, 2011)*.

Summary judgment was denied to prison officials in a case relating to actions that occurred in 2004 because the statute of limitations under *R.C. 2305.10* was not raised in an answer, and the Prison Litigation Reform Act (PLRA) did not impose upon a court an on-going obligation to sua sponte and continuously evaluate the sufficiency of an inmate's action even after counsel entered an appearance on behalf of the defendants. An initial screening under the PLRA occurred shortly after the action was filed. *Wolfel v. Collins, 2011 U.S. Dist. LEXIS 418 (S.D. Ohio Jan. 4, 2011)*.

Defendants, a corporation, which employed a doctor who was also a professor at a medical school, and the doctor's academic and clinical supervisor, were denied summary judgment on the doctor's *42 U.S.C.S. § 1983* claim alleging a violation of his freedom of expression rights under the First Amendment because (1) while the doctor's claim was untimely under *R.C. 2305.10*, it was preserved by Ohio's saving statute, *R.C. 2305.19*; (2) there remained genuine issues of material fact on the question whether the corporation was acting under color of state law as it appeared to exist as the sole entity through which faculty at the medical school could practice medicine; (3) the doctor's advocacy of forceps delivery in childbirth dealt with a matter of public concern; (4) the court found an academic exception to Garcetti v. Ceballos; (5) there was a genuine issue of material fact whether the actions taken by the supervisor against the doctor met the adverse action test; (6) whether the supervisor was able to completely put aside the doctor's advocacy of forceps delivery when deciding questions about the doctor's employment was an issue of fact a jury had to decide; and (7) judicial precedent precluded the supervisor's qualified immunity claim. *Kerr v. Hurd, 694 F. Supp. 2d 817, 2010 U.S. Dist. LEXIS 24210 (S.D. Ohio 2010)*.

Debarred government contractor's Bivens action and *42 U.S.C.S. § 1983* action were untimely under the two-year statute of limitations for personal injury actions in *R.C. 2305.10*. The continuing-violation doctrine did not apply because a recommendation for an extension of debarment was an effect of the original act, rather than an additional act. *Lasmer Indus. v. AM Gen., LLC, 741 F. Supp. 2d 829, 2010 U.S. Dist. LEXIS 103342 (S.D. Ohio 2010)*.

Claims by a litigant against a court reporter, alleging civil rights violations under *42 U.S.C.S. § 1983*, were not barred by the immunity under *R.C. 2744.03(A)(6)* and further, they were brought in a timely manner pursuant to the

two-year limitations period of *R.C. 2305.10*, such that they should not have resulted in a judgment on the pleadings in favor of the reporter; the litigant claimed that his rights were violated by the reporter's refusal to transcribe excerpts from a proceeding in the trial court. *Helfrich v. Branstool, 2009-Ohio-2865, 2009 Ohio App. LEXIS 2446 (Ohio Ct. App., Licking County 2009)*.

Plaintiff's federal discrimination claims accrued on July 6, 2001, when she was notified that her dialysis treatment was terminated, and she filed her initial complaint some seven years later. Applying two-year limitations period under *R.C. 2305.10*, plaintiff's Rehabilitation Act/Americans with Disabilities Act claims were barred. *Gentry v. Renal Network, 636 F. Supp. 2d 614, 2009 U.S. Dist. LEXIS 69225 (N.D. Ohio 2009)*.

R.C. 2305.10 is Ohio's general statute of limitations for personal injury applicable to all claims under *42 U.S.C.S. § 1983*, filed in state court. *Nadra v. Mbah, 2008-Ohio-3918, 119 Ohio St. 3d 305, 893 N.E.2d 829, 2008 Ohio LEXIS 2235 (Ohio 2008)*, cert. denied, *555 U.S. 1185, 129 S. Ct. 1343, 173 L. Ed. 2d 610, 2009 U.S. LEXIS 1456 (U.S. 2009)*.

When a mother's claims against social workers for not returning custody of the mother's child were interpreted as *42 U.S.C.S. § 1983* claims, those claims were time-barred because the applicable statute of limitations was *R.C. 2305.10*, providing a two year limitations period, as the scope of *R.C. 2305.09(D)*, providing a four year limitations period, was too narrow to be analogous to the "broad array" of claims made in *42 U.S.C.S. § 1983* actions. *Nadra v. Mbah, 2008-Ohio-3918, 119 Ohio St. 3d 305, 893 N.E.2d 829, 2008 Ohio LEXIS 2235 (Ohio 2008)*, cert. denied, *555 U.S. 1185, 129 S. Ct. 1343, 173 L. Ed. 2d 610, 2009 U.S. LEXIS 1456 (U.S. 2009)*.

District court did not have to decide a city's claim that an action filed by corporate entities that operated lodging establishments, alleging that the city violated their rights under the *Fourteenth Amendment to the U.S. Constitution* and the Civil Rights Act of 1964 when it gave a competitor a tax abatement related to the construction of a hotel and afforded the competitor an advantage by approving its request to construct a hotel that was taller than lodging establishments the corporate entities owned, because the corporate entities' claims failed as a matter of law. There was no evidence that the corporate entities attempted to obtain a tax abatement on hotels and motels they owned and were treated differently because they were Asian-Americans, and they agreed that nothing in city ordinances required the city to notify them before it evaluated the competitor's request to build its hotel. *Aarti Hospitality, LLC v. City of Grove City, 2008 U.S. Dist. LEXIS 38293 (S.D. Ohio May 9, 2008)*, aff'd, *350 Fed. Appx. 1, 2009 FED App. 0647N, 2009 U.S. App. LEXIS 20883 (6th Cir. Ohio 2009)*.

R.C. 2305.10 is Ohio's general statute of limitations for personal injury and is thus applicable to claims under *§ 1983, Title 42, US Code* filed in state court: *Nadra v. Mbah, 2008-Ohio-3918, 119 Ohio St. 3d 305, 893 N.E.2d 829, 2008 Ohio LEXIS 2235 (Ohio 2008)*, cert. denied, *555 U.S. 1185, 129 S. Ct. 1343, 173 L. Ed. 2d 610, 2009 U.S. LEXIS 1456 (U.S. 2009)*.

District court properly granted summary judgment in favor of a city in a *42 U.S.C.S. § 1983* action filed by city residents who alleged that the city's operation of water wells caused damage to the residents' groundwater,

constituted a taking of their property in violation of *U.S. Const. amend. V*, and violated due process under *U.S. Const. amends. V* and *XIV*; the claims were barred by the two-year statute of limitations under *R.C. 2305.10* because the residents knew of their injury in 1994 before the Ohio Supreme Court's Levin decision, which provided an adequate compensation procedure for takings claimants in Ohio state courts, and thus the claims were ripe for review in 1994. Continuing violation takings claims were not ripe for review because Ohio had adequate procedures after 1994 and the residents failed to request mandamus from the state on their continuing violation claims. *McNamara v. City of Rittman, 473 F.3d 633, 2007 FED App. 0004P, 2007 U.S. App. LEXIS 314 (6th Cir. Ohio)*, cert. denied, *552 U.S. 813, 128 S. Ct. 67, 169 L. Ed. 2d 17, 2007 U.S. LEXIS 10443 (U.S. 2007)*.

Where a prisoner alleged constitutional violations under *42 U.S.C.S. § 1983* against federal drug enforcement administration agents for an alleged assault that he suffered upon arrest and the deprivation of medical attention, although, pursuant to the two-year statute of limitations found in *R.C. 2305.10*, his claims were filed out of time, his complaint was held to be timely as he was protected by the prisoner mailbox rule; though he used an old address for the federal district court, he reasonably relied upon an outdated legal directory. However, his state claims for intentional infliction of emotional distress, assault, and battery were barred pursuant to *R.C. 2305.111* because, notwithstanding the mailbox rule, they were filed more than one year after his arrest. *Lindsey v. City of Cleveland, 2007 U.S. Dist. LEXIS 17966 (N.D. Ohio Mar. 13, 2007)*.

Former prisoner's pro se complaint against prison officials and employees for allegedly violating his First Amendment rights when they allegedly opened his "legal mail" was dismissed pursuant to *28 U.S.C.S. § 1915* because most of the letters were time barred under *R.C. 2305.10* and the other letters did not qualify as "legal mail." *Moes v. Milton, 2006 U.S. Dist. LEXIS 29383 (N.D. Ohio May 15, 2006)*.

District court erred by dismissing an arrestee's Bivens claim as untimely because he adequately preserved his claim. He filed his original claims within the two-year Ohio statute of limitations period under *R.C. 2305.10*, when the district court dismissed those claims without prejudice the arrestee unsuccessfully appealed that decision, and the arrestee refiled his claims within one year of the appellate court's affirmance of the district court's dismissal of his claims without prejudice. *Harris v. United States, 422 F.3d 322, 2005 FED App. 0376P, 2005 U.S. App. LEXIS 19058 (6th Cir. Ohio 2005)*, amended, *2005 U.S. App. LEXIS 28860 (6th Cir. Dec. 1, 2005)*.

Civil rights action which property owners filed against city officials, alleging that the officials violated their rights under the Fifth and *Fourteenth Amendments to the U.S. Constitution* by using city codes to force the owners out of business so their property could be acquired for redevelopment, was governed by the two-year statute of limitations contained in *R.C. 2305.10*, and the appellate court found that because the record did not support the owners' claim that they discovered information about the officials' motives within two years of the date they filed suit in federal court and that the suit was filed more than two years after the city sued the property owners alleging violations of the city codes, the action was untimely. *Banks v. City of Whitehall, 344 F.3d 550, 2003 FED App. 0340P, 2003 U.S. App. LEXIS 19657 (6th Cir. Ohio 2003)*.

The two year limitations period found in R.C. 2305.10 for personal injury claims applies to claims brought under 42 U.S.C.S. § 1983, as well as to claims brought under 42 U.S.C.S. § 1981. Bell v. Ohio State Univ., 2002 U.S. Dist. LEXIS 26685 (S.D. Ohio Feb. 5, 2002), aff'd, 351 F.3d 240, 2003 FED App. 0434P, 2003 U.S. App. LEXIS 24676 (6th Cir. Ohio 2003).

R.C. 2305.10(A), the two-year personal injury limitations period, governs Section 1983 actions: *Peoples Rights Org. v. Montgomery, 142 Ohio App. 3d 443, 756 N.E.2d 127, 2001 Ohio App. LEXIS 1648 (Ohio Ct. App., Madison County 2001)*.

Where the plaintiff is seeking compensation for bodily injury in a claim under 42 USC § 1983, the two-year statute of limitations contained in R.C. 2305.10 clearly applies rather than the four-year statute of limitations contained in R.C. 2305.09(D): Rowe v. Artis, 2001 Ohio App. LEXIS 71 (Ohio Ct. App., Stark County Jan. 8, 2001).

The applicable limitations period for § 1983 actions is the two-year period provided in R.C. 2305.10. The prosecutor's letter threatening action triggered running of the statute: State ex rel. Eckstein v. Midwest Pride IV, 128 Ohio App. 3d 1, 713 N.E.2d 1055, 1998 Ohio App. LEXIS 1442 (Ohio Ct. App., Fayette County 1998).

The two-year statute of limitations for actions for bodily injury or injury to personal property applied to civil rights action by trucking company against county which challenged the constitutionality of a county ordinance banning through truck travel on county roads: Kuhnle Bros. v. County of Geauga, 103 F.3d 516, 1997 FED App. 0003P, 1997 U.S. App. LEXIS 158 (6th Cir. Ohio 1997).

R.C. 2305.10 governs § 1983 actions; claims under § 1983 accrued when the plaintiff discovered that he had a cause of action: Harris v. Muchnicki, 932 F. Supp. 192, 1996 U.S. Dist. LEXIS 14719 (N.D. Ohio 1996), aff'd, 1996 U.S. App. LEXIS 30184 (6th Cir. Ohio Nov. 14, 1996).

State employee's civil rights claims were time barred and were not tolled until he received "unequivocal" notice that the board of review's decision was final and would be followed by no further process, as the Ohio Administrative Code provided him with notice of the process he would and did receive: Collyer v. Darling, 98 F.3d 211, 1996 FED App. 0317P, 1996 U.S. App. LEXIS 25494 (6th Cir. Ohio 1996), cert. denied, *520 U.S. 1267, 117 S. Ct. 2439, 138 L. Ed. 2d 199, 1997 U.S. LEXIS 3601 (U.S. 1997)*.

Ohio's two-year statute of limitations is the proper statute of limitations for § 1983 actions, not the four-year residual statute of limitations: LRL Properties v. Portage Metro Hous. Auth., 55 F.3d 1097, 1995 FED App. 0155P, 1995 U.S. App. LEXIS 12547 (6th Cir. Ohio 1995).

Where the alleged violations that form the basis for a cause of action are part of a continuous pattern of discrimination, the cause of action is not barred by the statute of limitations: Martin v. Voinovich, 840 F. Supp. 1175, 1993 U.S. Dist. LEXIS 18468 (S.D. Ohio 1993).

Section 1981 and 1983 actions which arise in Ohio are subject to the two-year statute of limitation for personal injury actions, rather than the one-year intentional tort statute of limitation: *Harris v. Board of Educ., 798 F. Supp. 1331, 1992 U.S. Dist. LEXIS 9499 (S.D. Ohio 1992)*.

For civil rights actions arising in Ohio, the court must apply a two year statute of limitations borrowed from the Ohio Revised Code *R.C. 2305.10*: *Stone v. Holzberger, 807 F. Supp. 1325, 1992 U.S. Dist. LEXIS 11119 (S.D. Ohio 1992)*, aff'd, *23 F.3d 408, 1994 U.S. App. LEXIS 17606 (6th Cir. Ohio 1994)*.

R.C. 2305.10, the statute of limitations for personal injury actions, is applicable to § 1983 actions: *Francis v. Cleveland, 78 Ohio App. 3d 593, 605 N.E.2d 966, 1992 Ohio App. LEXIS 890 (Ohio Ct. App., Cuyahoga County 1992)*.

Refusal to re-evaluate a final determination is not a continuing violation: *Dixon v. Anderson, 928 F.2d 212, 1991 U.S. App. LEXIS 4605 (6th Cir. Ohio 1991)*.

In a *42 USC § 1981* action brought by unsuccessful applicants for union membership the applicable statute of limitations is Ohio's two-year statute of limitations for personal injuries under *R.C. 2305.10*: *Alexander v. Local 496, Laborers Int'l Union, 778 F. Supp. 1401, 1991 U.S. Dist. LEXIS 18235 (N.D. Ohio 1991)*.

Two-year limitations period for actions involving bodily injury or injury to personal property is also the applicable state limitations period for claims arising under *42 USC § 1983*: *Hull v. Cuyahoga Valley Joint Vocational Sch. Dist. Bd. of Educ., 926 F.2d 505, 1991 U.S. App. LEXIS 2551 (6th Cir. Ohio)*, cert. denied, *501 U.S. 1261, 111 S. Ct. 2917, 115 L. Ed. 2d 1080, 1991 U.S. LEXIS 3877 (U.S. 1991)*.

In Ohio, the statute of limitations for a *42 USC § 1983* action is two years and begins to run when the plaintiff knows or has reason to know of the injury which is the basis of his action: *Wohl v. Cleveland Bd. of Educ., 741 F. Supp. 688, 1990 U.S. Dist. LEXIS 9232 (N.D. Ohio 1990)*.

In Ohio, the appropriate statute of limitations in *42 USC §§ 1981*, *1983*, and *1985* actions is *R.C. 2305.10*, the residual or general personal injury statute, which gives the plaintiff two years from the time the cause of action arose to bring an action: *Walker v. Lakewood, 742 F. Supp. 429, 1990 U.S. Dist. LEXIS 10548 (N.D. Ohio 1990)*.

The general Ohio statute of limitations for actions for bodily injuries (*R.C. 2305.10*) is to be applied to actions arising under *42 USC § 1983*: *Farber v. Massillon Bd. of Educ., 908 F.2d 65, 1990 U.S. App. LEXIS 11576 (6th Cir. Ohio 1990)*, cert. denied, *498 U.S. 1082, 111 S. Ct. 952, 112 L. Ed. 2d 1041, 1991 U.S. LEXIS 739 (U.S. 1991)*.

The appropriate statute of limitations for *42 USC § 1983* civil rights actions arising in Ohio is contained in *R.C. 2305.10* which requires that actions for bodily injury be filed within two years after their accrual: *Browning v. Pendleton, 869 F.2d 989, 1989 U.S. App. LEXIS 3078 (6th Cir. Ohio 1989)*, See also *McSurely v. Hutchison, 823 F.2d 1002, 1987 U.S. App. LEXIS 9881 (6th Cir. Ky. 1987)*, cert. denied, *485 U.S. 934, 108 S. Ct. 1107, 99 L. Ed.*

2d 269, 1988 U.S. LEXIS 1189 (U.S. 1988) (applying Kentucky general personal injury limitations statute to Bivens claims).

Where state law provides multiple statutes of limitations for personal injury actions, courts considering *42 USC § 1983* claims should borrow the state's general or residual personal injury statute of limitations: *Owens v. Okure, 488 U.S. 235, 109 S. Ct. 573, 102 L. Ed. 2d 594, 1989 U.S. LEXIS 305 (U.S. 1989)*.

Ohio's general, 2-year statute of limitations is applicable in actions arising under *42 U.S.C. § 1983*, not 4-year residual statute of limitations for personal injury actions or assault and battery one year limitation: *Valerio v. Dahlberg, 716 F. Supp. 1031, 1988 U.S. Dist. LEXIS 17072 (S.D. Ohio 1988)*.

Plaintiffs' civil rights claims alleging law enforcement misconduct accrued when they knew or had reason to know that their civil rights had been violated; plaintiffs would be allowed to file an amended complaint stating the dates on which they were convicted and any facts showing that the violation was fraudulently concealed from them: (decided under former analogous section) *Olding v. Casey, 680 F. Supp. 1081, 1987 U.S. Dist. LEXIS 13099 (S.D. Ohio 1987)*.

In actions brought under *42 USC § 1983*, state tolling statutes apply where the most nearly analogous state statute of limitations is borrowed, to the extent that the tolling provisions are not inconsistent with the federal policy underlying § 1983: (decided under former analogous section) *Williams v. Dayton Police Dep't, 680 F. Supp. 1075, 1987 U.S. Dist. LEXIS 13114 (S.D. Ohio 1987)*.

Class actions

The two-year statute of limitations set forth in *R.C. 2305.10* was not tolled by the pendency of the class action certification in a federal class action in which appellee was named as a defendant and appellant was a potential class member; cross-jurisdictional class action tolling of statutes of limitations is not recognized in Ohio: *Vaccariello v. Smith & Nephew Richards, Inc., 2000 Ohio App. LEXIS 3516 (Ohio Ct. App., Cuyahoga County Aug. 3, 2000)*.

Conflict of laws

Trial court properly dismissed a bus passenger's negligence action against a bus company, arising from an accident that allegedly occurred due to the bus driver's negligent operation of the bus, as the action was not brought within the two-year limitations period of *R.C. 2305.10(A)*; as the accident occurred in Michigan, but the bus company operated out of Ohio, the passenger was a resident of Ohio, and the driver was also a resident of Ohio, Ohio law controlled because it had the most significant relationship to the parties and the circumstances. *McClinton v. Midtown Express Bus Lines, 2007-Ohio-531, 2007 Ohio App. LEXIS 475 (Ohio Ct. App., Cuyahoga County 2007)*.

In an action where the operative facts occurred in another state, Ohio law applies to determine procedural and remedial matters. Ohio law determines whether an action sounds in contract or tort and which statute of limitations is applicable: *Lee v. Wright Tool & Forge Co., 48 Ohio App. 2d 148, 2 Ohio Op. 3d 115, 356 N.E.2d 303, 1975 Ohio App. LEXIS 5894 (Ohio Ct. App., Summit County 1975)*.

Continuing injuries

In this *42 U.S.C.S. § 1983* action, because plaintiff complained of harassment in letters to his supervisors in May of 2008, within the limitations period, his hostile work environment claim fell within the continuing violation exception. *Santino v. Columbus Pub. Schs, 833 F. Supp. 2d 780, 2011 U.S. Dist. LEXIS 157727 (S.D. Ohio 2011)*, dismissed, *2013 Ohio Misc. LEXIS 10226 (Ohio C.P. Mar. 18, 2013)*.

When homeowners who sued a construction company and a neighbor for allegedly diverting water onto the homeowners' property also claimed that the two-year statute of limitations in *R.C. 2305.10* should not apply to the homeowners' claim for damage to personal property allegedly caused by flooding of the homeowners' basement more than two years before the action was filed, it was error to grant summary judgment dismissing this claim because it could not be determined as a matter of law from the evidence submitted on summary judgment whether the tort of which the homeowners were alleged victims was continuous or permanent. *Creech v. Brock & Assocs. Constr., 2009-Ohio-3930, 183 Ohio App. 3d 711, 918 N.E.2d 541, 2009 Ohio App. LEXIS 3348 (Ohio Ct. App., Preble County 2009)*.

Tenants' personal injury complaint against their landlord was barred by the statute of limitations in *R.C. 2305.10* because their suit to recover for personal injuries sustained allegedly as a result of mold in their rental property was filed more than two years after their exposure to the continuing tort ended when they moved from the rental property. The savings statute of *R.C. 2305.19* did not apply since the tenants' earlier voluntary dismissal of their first complaint occurred before the limitations period expired. *Craver v. Doogan, 2006-Ohio-1783, 2006 Ohio App. LEXIS 1638 (Ohio Ct. App., Clermont County 2006)*.

Generally, when a tort involves continuing injury, the cause of action accrues, and the limitation period begins to run, at the time the tortious conduct ceases: *Harper v. Union Sav. Asso., 429 F. Supp. 1254, 1977 U.S. Dist. LEXIS 16925 (N.D. Ohio 1977)*.

Continuing or permanent tort

Record was insufficient to determine as a matter of law whether there was a continuing tort or a permanent tort for imposition of the appropriate statute of limitations on a claim of damage to personal property: *Creech v. Brock & Assocs. Constr., 2009-Ohio-3930, 183 Ohio App. 3d 711, 918 N.E.2d 541, 2009 Ohio App. LEXIS 3348 (Ohio Ct. App., Preble County 2009)*.

Contract term altering

A two-year policy limit on uninsured motorist claims, even when the tortfeasor is unidentified, does not violate public policy: *Veloski v. State Farm Mut. Auto Ins. Co., 130 Ohio App. 3d 27, 719 N.E.2d 574, 1998 Ohio App. LEXIS 4222 (Ohio Ct. App., Cuyahoga County 1998)*.

To reduce the time for suit provided by a statute of limitations, an insurance policy must be written in terms that are clear and unambiguous to the policyholder. (*Colvin v. Globe Am. Casualty Co., 69 Ohio St. 2d 293, 23 Ohio Op. 3d 281, 432 N.E.2d 167, 1982 Ohio LEXIS 574 (Ohio 1982)*, overruled, *Miller v. Progressive Casualty Ins. Co., 1994-Ohio-160, 69 Ohio St. 3d 619, 635 N.E.2d 317, 1994 Ohio LEXIS 1598 (Ohio 1994)*.

A limitation of action clause in an automobile liability insurance policy provision for uninsured and underinsured motorist coverage which ends with the following language - "within the time period allowed by the applicable statute of limitations for bodily injury or death actions in the state where the accident occurred" - is ambiguous, and not clear and easily understood by a lay person; it is therefore invalid and unenforceable: *Grange Mut. Casualty Co. v. Fodor, 21 Ohio App. 3d 258, 487 N.E.2d 571, 1984 Ohio App. LEXIS 12681 (Ohio Ct. App., Cuyahoga County 1984)*.

R.C. 3937.18 has no statute of limitation nor does it make reference to any prescribed statute of limitation within which uninsured motorist's actions must be brought. An uninsured motorist provision in an insurance contract providing that any suit, action, or proceeding in arbitration shall be brought against the insurer for the recovery of any claim within twelve months after the date of the accident is a reasonable period of time. Further, such one year limitation of action provision contained in an insurance contract is not against public policy and is independent of and not in conflict with either *R.C. 2305.10* or *R.C. 2305.06*, which contain statutes of limitation of two and fifteen years respectively for bringing actions for bodily injury and on written contracts: *Globe American Casualty Co. v. Goodman, 41 Ohio App. 2d 231, 70 Ohio Op. 2d 447, 325 N.E.2d 257, 1974 Ohio App. LEXIS 2703 (Ohio Ct. App., Cuyahoga County 1974)*.

Contract versus tort action

In an inmate's action against the private operator of the prison that employed a dentist who allegedly performed negligent dental work on the inmate, his breach of contract claim was time-barred under the applicable two-year limitations period for negligent conduct because the claim was based on the same conduct that supported the claim for negligent hiring/retention. *Erickson v. Management & Training Corp., 2013-Ohio-3864, 2013 Ohio App. LEXIS 4029 (Ohio Ct. App., Ashtabula County 2013)*.

Whether a suit is brought in contract or tort, when the "essence" of an action is wrongful harm to person or personal property, the *R.C. 2305.10* statute of limitations is the appropriate one to apply: *Ressallat v. Burglar & Fire Alarms, Inc., 79 Ohio App. 3d 43, 606 N.E.2d 1001, 1992 Ohio App. LEXIS 1435 (Ohio Ct. App., Crawford County 1992)*.

The two year statute of limitations in *R.C. 2305.10* cannot be avoided by couching a complaint in terms of a breach of contract action rather than in tort. If the action seeks to recover for injury to personal property, regardless of the terminology used in the complaint, the two year statute is applicable: *Underwriters at Lloyd's under Policy No. LHO 10497 v. Peerless Storage Co., 404 F. Supp. 492, 1 Ohio Op. 3d 407, 1975 U.S. Dist. LEXIS 15090 (S.D. Ohio 1975)*, aff'd, *561 F.2d 20, 7 Ohio Op. 3d 463, 1977 U.S. App. LEXIS 11653 (6th Cir. Ohio 1977)*.

Where a statute, specific in terms, limits the time within which an action for injuries to the person may be brought, such statute governs all actions the real purpose of which is to recover for an injury to the person, whether based upon contract or tort. The fact that the action arose from the breach of an express or implied contract is immaterial: *Tomle v. New York C. Railroad, 234 F. Supp. 101, 4 Ohio Misc. 31, 32 Ohio Op. 2d 81, 1964 U.S. Dist. LEXIS 7258 (N.D. Ohio 1964)*.

R.C. 2305.10 providing that an action for injury to personal property shall be brought within two years after the cause of action thereof arose, governs all actions the real purpose of which is to recover damages for injury to personal property and losses incident thereof, and it makes no difference whether such action is for a breach of contract or strictly in tort. The limitation is imposed on the cause of action, and the form in which the action is brought is immaterial: *Farbach Chemical Co. v. Commercial Chemical Co., 101 Ohio App. 209, 1 Ohio Op. 2d 146, 136 N.E.2d 363, 1956 Ohio App. LEXIS 693 (Ohio Ct. App., Hamilton County 1956)*.

This section, providing that an action for bodily injury shall be brought within two years after the cause thereof arose, governs all actions the real purpose of which is to recover damages for injury to the person and losses incident thereto and it makes no difference whether such action is for a breach of contract or strictly in tort. The limitation is imposed on the cause of action and the form in which the action is brought is immaterial: *Andrianos v. Community Traction Co., 155 Ohio St. 47, 44 Ohio Op. 72, 97 N.E.2d 549, 1951 Ohio LEXIS 534 (Ohio 1951)*.

Contribution action

In an action under the Federal Employers Liability Act, 45 U.S.C.S. § 51 et seq., a battery manufacturer was not entitled to *Fed. R. Civ. P. 12(c)* judgment on the pleadings with respect to the employer's third-party complaint for contribution; although the statute of limitations under *R.C. 2305.10* had already expired for the employee's potential claims against the battery manufacturer at the time of the settlement agreement between the employer and the employee, the expiration of the limitations period under *§ 2305.10* on the underlying tort claim did not extinguish liability in the contribution action under *R.C. 2307.25*. *Martin v. CSX Transp., Inc., 617 F. Supp. 2d 662, 2009 U.S. Dist. LEXIS 44554 (N.D. Ohio 2009)*.

Conversion

In a forfeiture case, an owner's reliance on alleged United States Constitutional violations did not result in his conversion action being timely because the action was still filed outside of the two year period; the latest date that

the owner knew or had reason to know of the injury of wrongfully seized property occurred several years prior when the forfeiture judgment was reversed on appeal. *Davis v. City of Canton, 2014-Ohio-195, 2014 Ohio App. LEXIS 178 (Ohio Ct. App., Stark County 2014)*.

Counterclaims

District court found that a customer's claim that it was entitled to an offset on claims filed by an interstate rail carrier, seeking recovery of unpaid freight transportation charges, was barred by the two-year statute of limitations set forth in *R.C. 2305.10*. The customer's claim, which alleged that the rail carrier had damaged its property, was based on an incident which occurred seven years before the parties' dispute over transportation charges, and it was a permissive counterclaim that was not related to the underlying dispute. *CSX Transp. v. Globe Metallurgical, Inc., 2007 U.S. Dist. LEXIS 38470 (S.D. Ohio May 25, 2007)*.

Filing of a complaint tolls the statute of limitations for counterclaims that arise out of the same transaction or occurrence underlying the original claim: *Mich. Millers Mut. Ins. Co. v. Christian, 2003-Ohio-2455, 153 Ohio App. 3d 299, 794 N.E.2d 68, 2003 Ohio App. LEXIS 2258 (Ohio Ct. App., Logan County 2003)*.

Filing of a complaint by the plaintiff against a defendant tolls the statute of limitations for a counterclaim asserted by the defendant which relates to the same transaction or occurrence asserted in the original claim: *Armstrong v. Harp Realty Co., 73 Ohio App. 3d 292, 596 N.E.2d 1131, 1991 Ohio App. LEXIS 1733 (Ohio Ct. App., Cuyahoga County 1991)*.

Death of defendant

When an action is brought by the filing of a complaint, within the statute of limitations, against a deceased defendant, complainant has one year thereafter in which to cause the appointment of a suitable personal representative and obtain service of summons against him: *Hayden v. Ours, 44 Ohio Misc. 62, 73 Ohio Op. 2d 224, 337 N.E.2d 183, 1975 Ohio Misc. LEXIS 98 (Ohio C.P. 1975)*.

The two-year statute of limitations imposed by *R.C. 2305.10*, is not tolled by the death of an alleged tortfeasor occurring less than two years after the cause of action arose: *Sells v. Comisar, 14 Ohio App. 2d 199, 43 Ohio Op. 2d 401, 237 N.E.2d 624, 1967 Ohio App. LEXIS 351 (Ohio Ct. App., Montgomery County 1967)*.

The statute of limitations for an action for personal injuries begins to run at the time the injuries are sustained even though the person against whom such action would be brought is killed in the accident in which such injuries occurred: *Wrinkle v. Trabert, 174 Ohio St. 233, 22 Ohio Op. 2d 248, 188 N.E.2d 587, 1963 Ohio LEXIS 709 (Ohio 1963)*.

DES-related injury

A cause of action based upon DES exposure accrues only when the plaintiff has been informed by competent medical authority that she has been injured by the DES, or upon the date on which, by the exercise of reasonable diligence, she should have known that she had been so injured: *Burgess v. Eli Lilly & Co., 995 F.2d 646, 1993 U.S. App. LEXIS 13203 (6th Cir. 1993)*.

The provision of *R.C. 2305.10* regarding the accrual date of a cause of action for DES-related injuries is violative of both the state and federal constitutions: *Burgess v. Eli Lilly & Co., 995 F.2d 646, 1993 U.S. App. LEXIS 13203 (6th Cir. 1993)*.

The provision of *R.C. 2305.10* regarding the accrual date of a cause of action for DES-related injuries is unconstitutional. A cause of action based upon DES exposure accrues only when the plaintiff has been informed by competent medical authority that she has been injured by DES, or upon the date on which, by the exercise of reasonable diligence, she should have known that she has been so injured: *Burgess v. Eli Lilly & Co., 1993 Ohio 193, 66 Ohio St. 3d 59, 609 N.E.2d 140, 1993 Ohio LEXIS 690 (Ohio 1993)*.

R.C. 2305.10 began to run on plaintiff's claim for injuries arising from cervical cancer allegedly caused by use of drugs manufactured by defendant when two of plaintiff's physicians told her they believed her cancer was caused by DES, since at that point she had notice of medical knowledge that would support her subjective belief: *Renfroe v. Eli Lilly & Co., 541 F. Supp. 805, 1982 U.S. Dist. LEXIS 13064 (E.D. Mo.)*, aff'd, *686 F.2d 642, 1982 U.S. App. LEXIS 16421 (8th Cir. Mo. 1982)*.

Discovery rule

Where appellees' decedent allegedly incurred brain injuries due impacts he received while playing football for appellant university, the trial court erred in granting appellants' Civ.R. 12(B)(6) motion to dismiss appellees' negligence, constructive fraud, and fraudulent concealment claims because accepting appellees' factual allegations as true and making all reasonable inferences in their favor, the complaint did not show conclusively that these claims were time-barred, as it alleged that before the decedent's brain injuries were diagnosed, had no reason to know he had suffered a latent brain injury while playing football, and suit was filed less than two years after that diagnosis; *Schmitz v. NCAA, 2018-Ohio-4391, 155 Ohio St. 3d 389, 122 N.E.3d 80, 2018 Ohio LEXIS 2614 (Ohio 2018)*.

Relevant standard for determining whether the discovery rule tolls the running of a statute of limitations is the plaintiff's knowledge of the legal injury or wrong committed by the defendant. The discovery rule must be specifically tailored to the particular context to which it is applied. Running of the limitation was not tolled where there was no evidence of any wrongful conduct on the part of those defendants: *Doane v. Givaudan Flavors Corp., 2009-Ohio-4989, 184 Ohio App. 3d 26, 919 N.E.2d 290, 2009 Ohio App. LEXIS 4268 (Ohio Ct. App., Hamilton County 2009)*.

Trial court did not err in dismissing the home owner's personal injury claims finding that they were time-barred under *R.C. 2305.10* because the home owner had made a connection in her own mind as early as 1991 between the health problems that she was experiencing and the chicken plant across the street from her home. The fact that she had yet to receive a diagnosis substantiating her suspicions did not eclipse her own acknowledgment that as early as 1991 she was experiencing illness which she attributed to the chicken plant. *Gibson v. Park Poultry, Inc., 2007-Ohio-4248, 2007 Ohio App. LEXIS 3929 (Ohio Ct. App., Stark County 2007)*.

When an alleged injured party claimed that a motorist's car struck the alleged injured party, the discovery rule did not extend the limitations period in *R.C. 2305.10(A)* within which the alleged injured party had to file any lawsuit because the alleged injured party knew he was injured at the time of the incident, as he displayed his bruised heel to the motorist at that time. *Combs v. Spence, 2007-Ohio-2210, 2007 Ohio App. LEXIS 2067 (Ohio Ct. App., Licking County 2007)*.

Trial court did not err in dismissing the home owner's personal injury claims finding that they were time-barred under *R.C. 2305.10* because the home owner had made a connection in her own mind as early as 1991 between the health problems that she was experiencing and the chicken plant across the street from her home. The fact that she had yet to receive a diagnosis substantiating her suspicions did not eclipse her own acknowledgment that as early as 1991 she was experiencing illness which she attributed to the chicken plant. *Gibson v. Park Poultry, Inc., 2007-Ohio-4248, 2007 Ohio App. LEXIS 3929 (Ohio Ct. App., Stark County 2007)*.

Plaintiff's suspicion that her symptoms were related to the ventilation system was not sufficient to trigger the running of the statute of limitations: *Grimme v. Twin Valley Cmty. Local Sch. Dist. Bd. of Educ., 2007-Ohio-5495, 173 Ohio App. 3d 460, 878 N.E.2d 1096, 2007 Ohio App. LEXIS 4815 (Ohio Ct. App., Preble County 2007)*.

Discovery rule did not toll the statute of limitations until plaintiff received the recall notice where he knew at the time of the motorcycle accident that there was a potential problem with the motorcycle: *Baxley v. Harley-Davidson Motor Co., 2007-Ohio-3678, 172 Ohio App. 3d 517, 875 N.E.2d 989, 2007 Ohio App. LEXIS 3353 (Ohio Ct. App., Hamilton County 2007)*.

Because the trial court reached the correct decision by dismissing the personal injury claim on the basis of the statute of limitations, the omission of a discussion of the applicability of the discovery rule to personal injury claims constituted harmless error. *McDowell v. DeCarlo, 2007-Ohio-1262, 2007 Ohio App. LEXIS 1173 (Ohio Ct. App., Summit County 2007)*.

Summary judgment was properly granted to an audiologist and his employer dismissing a patient's personal injury suit against them, alleging negligence in the care provided to the patient, because the patient's injury occurred on the date that he saw the audiologist for a hearing aid evaluation, and his suit was not filed within two years of that date. The court declined to apply the discovery rule to the patient's claim because the discovery rule is given narrow application and is applied in only limited situations, and there was no case law supporting the application of the rule

to the patient's claim. *Hartman v. Schachner, 2005-Ohio-7000, 2005 Ohio App. LEXIS 6293 (Ohio Ct. App., Lucas County 2005)*.

When an injury does not manifest itself immediately, the cause of action does not arise until the plaintiff knows or, by the exercise of reasonable diligence should have known, that he had been injured by the conduct of defendant, for purposes of the statute of limitations contained in *R.C. 2305.10*: *Venham v. Astrolite Alloys, 73 Ohio App. 3d 90, 596 N.E.2d 585, 1991 Ohio App. LEXIS 1773 (Ohio Ct. App., Washington County 1991)*.

When an injury does not manifest itself immediately, the cause of action does not arise until the plaintiff knows or, by the exercise of reasonable diligence should have known, that he had been injured by the conduct of defendant, for purposes of the statute of limitations contained in *R.C. 2305.10*: *O'Stricker v. Jim Walter Corp., 4 Ohio St. 3d 84, 447 N.E.2d 727, 1983 Ohio LEXIS 672 (Ohio 1983)*.

The "discovery rule" as announced by the *Supreme Court in O'Stricker v. Jim Walter Corp., 4 OS3d 84*, requires that two factors be discovered before the limitation period set forth in *R.C. 2305.10* commences to run; first, a plaintiff must know or reasonably should have known that he has been injured; second, a plaintiff must know or reasonably should have known that his injury was proximately caused by the conduct of the defendant: *Viock v. Stowe-Woodward Co., 13 Ohio App. 3d 7, 467 N.E.2d 1378, 1983 Ohio App. LEXIS 11364 (Ohio Ct. App., Erie County 1983)*.

When an injury does not manifest itself immediately, the cause of action arises upon the date on which the plaintiff is informed by competent medical authority that he has been injured, or upon the date on which, by the exercise of reasonable diligence, he should have become aware that he had been injured, whichever date occurs first. (*O'Stricker v. Jim Walter Corp., 4 Ohio St. 3d 84, 447 N.E.2d 727, 1983 Ohio LEXIS 672 (Ohio 1983)*.

The "discovery rule," which tolls the running of the statute of limitations until a patient discovers or should have discovered a foreign object left in the surgical patient's body, is applicable to actions brought under both *R.C. 2305.10* and *2305.11*: *Neilsen v. Barberton Citizens Hosp., 4 Ohio App. 3d 18, 446 N.E.2d 209, 1982 Ohio App. LEXIS 10952 (Ohio Ct. App., Summit County 1982)*.

An insidious disease is "manifested" at the time there is an outward perceptible sign of disease and not at the time the disease has, or reasonably should have been discovered. The date of death is the last possible date that the disease could have been manifested: *Bazdar v. Koppers Co., 524 F. Supp. 1194, 1981 U.S. Dist. LEXIS 15422 (N.D. Ohio 1981)*, See also *Johnson v. Koppers Co., Inc., 524 F. Supp. 1152 (N.D.)*.

—Suspicion insufficient

Trial court erred by granting summary judgment because the teacher's negligence claim was brought within the two-year limitations period. The evidence supported that the teacher was not certain of the cause of the odor and her health problems until the board meeting when an air tester revealed the presence of a Freon leak in her

classroom; the teacher's suspicion of the cause was not enough to trigger the statute of limitations. *Grimme v. Twin Valley Cmty. Local Sch. Dist. Bd. of Educ., 2007-Ohio-5495, 173 Ohio App. 3d 460, 878 N.E.2d 1096, 2007 Ohio App. LEXIS 4815 (Ohio Ct. App., Preble County 2007)*.

Disease, accrual of action

Claim for bodily injury resulting from a disease accrues at time the disease manifests itself; disease is manifested at time there is an outward, perceptible sign of the disease, and not at time that the disease has, or reasonably should have been, discovered: *Amerisure Cos. v. Statesman Ins. Co., 77 Ohio App. 3d 239, 601 N.E.2d 577, 1991 Ohio App. LEXIS 4336 (Ohio Ct. App., Hamilton County 1991)*.

Diversity actions generally

In a survivorship action in a federal court in Ohio by an administratrix of a deceased who was injured in a Washington, D.C. accident, the time limit for filing the action is governed by the Ohio statute of limitations: *Myers v. Alvey-Ferguson Co., 331 F.2d 223, 29 Ohio Op. 2d 108, 1964 U.S. App. LEXIS 5468 (6th Cir. Ohio 1964)*.

In actions by a husband and wife arising out of an automobile collision in Kentucky, filed in a federal court sitting in Indiana, the Indiana borrowing statute compelled the court to apply the two-year statute of limitations of Ohio, the state in which the nonresident defendant resided: *Hobbs v. Firestone Tire & Rubber Co., 195 F. Supp. 56, 17 Ohio Op. 2d 13, 1961 U.S. Dist. LEXIS 2780 (N.D. Ind. 1961)*.

Dog, injuries caused by

Action based on the liability created by *R.C. 955.28* for injuries caused by a dog is governed by *R.C. 2305.07*, not *2305.10*: *Bora v. Kerchelich, 2 Ohio St. 3d 146, 443 N.E.2d 509, 1983 Ohio LEXIS 635 (Ohio 1983)*.

Drugs generally

A report from a medical review service, obtained by plaintiff spouse of patient who died after taking defendant manufacturer's drug, indicating the drug's possible side effects, was too indefinite in nature to trigger the statute of limitations on plaintiff's products liability suit: *Yacub v. Sandoz Pharms. Corp., 85 F. Supp. 2d 817, 1999 U.S. Dist. LEXIS 21057 (S.D. Ohio 1999)*.

Where there was no evidence indicating that decedent and plaintiff spouse in products liability case knew or should have known that defendant manufacturer's drug was proximately causing decedent's injury at the time decedent

was taking it, the statute of limitations did not then begin to run: *Yacub v. Sandoz Pharms. Corp., 101 F. Supp. 2d 852, 1998 U.S. Dist. LEXIS 22381 (S.D. Ohio 1998)*.

A claim seeking damages for bodily injury allegedly resulting from the failure to warn of the possible side effects of a polio vaccine to those in close contact with the vaccine recipient is time-barred, whether under *R.C. 2305.11(A)* or *2305.10*, where the plaintiff discovered, more than two years before filing the complaint, the causal relationship between his injury and the administration of the vaccine to his child (the vaccine recipient): *Lundy v. Lederle Laboratories, Div. of American Cyanamid Co., 54 Ohio App. 3d 192, 561 N.E.2d 1027, 1988 Ohio App. LEXIS 4314 (Ohio Ct. App., Franklin County 1988)*.

When plaintiff admitted in her depositions that for more than two years before the filing of her suit she knew she was suffering a variety of illnesses which she believed were caused by Depo-Provera; defendant was entitled to summary judgment of dismissal even though plaintiff's affidavit contradicted her testimony: *Longmire v. Upjohn Co., 686 F. Supp. 659, 1988 U.S. Dist. LEXIS 6145 (S.D. Ohio 1988)*.

R.C. 2305.10, not *R.C. 2305.07*, governed plaintiff's claim for injuries suffered when he contracted hepatitis after being administered an anesthetic manufactured and sold by separate defendants, since the potential liability of the defendants did not rest solely on the Ohio Pure Food and Drug Act: *Mehl v. ICI Americas, Inc., 593 F. Supp. 157, 1984 U.S. Dist. LEXIS 24436 (S.D. Ohio 1984)*.

The statute of limitations was tolled as to plaintiff's claim for personal injuries allegedly due to taking birth control pills until plaintiff discovered, or by the exercise of reasonable diligence should have discovered, the cause of the injuries: *McKenna v. Ortho Pharmaceutical Corp., 622 F.2d 657, 1980 U.S. App. LEXIS 19539 (3d Cir. Pa.)*, cert. denied, *449 U.S. 976, 101 S. Ct. 387, 66 L. Ed. 2d 237, 1980 U.S. LEXIS 3856 (U.S. 1980)*.

Due process

As a trial court properly dismissed a personal injury action against a foundation for failure to state a claim due to the running of the statute of limitations found in *R.C. 2305.10(A)*, the dismissal of the complaint did not violate the due process rights of the aunt who brought the suit against the foundation. *Karnofel v. Beck, 2008-Ohio-6874, 2008 Ohio App. LEXIS 5742 (Ohio Ct. App., Trumbull County 2008)*.

Electric shock

Plaintiff's cause of action for any injuries resulting from the electric shock arose when she received it and knew she was injured, not when she first learned that her heart palpitations might be a consequence: *Holmes v. Community College, 97 Ohio App. 3d 678, 647 N.E.2d 498, 1994 Ohio App. LEXIS 3479 (Ohio Ct. App., Cuyahoga County 1994)*.

Emotional distress

Trial court did not err in applying the two-year statute of limitations because plaintiff's claims did not fit the definition of a "medical claim," and while the complaint continuously claimed emotional distress, there was nothing alleging that the distress was intentionally caused by any defendant; the complaint referenced negligent behavior by a medical provider approximately 9 times in the 12 paragraphs while failing to state any intentional misconduct. *Hall v. Coleman Behavioral Health Servs., 2020-Ohio-4640, 2020 Ohio App. LEXIS 3480 (Ohio Ct. App., Trumbull County 2020)*.

Plaintiff's intentional infliction of emotional distress claim was time barred because any emotional distress plaintiff suffered from his commitment accrued at the time of the commitment more than 20 years before, and well beyond either the two- or four-year statutes of limitations. *Raiser v. Corp., 2011 U.S. Dist. LEXIS 8345 (S.D. Ohio Jan. 28, 2011)*, aff'd, *494 Fed. Appx. 506, 2012 FED App. 855N, 2012 U.S. App. LEXIS 16657 (6th Cir. Ohio 2012)*.

Act of co-employees in summoning the wife to the scene of her husband's injuries did not constitute an intentional infliction of emotional distress. Any claim for negligent infliction of emotional distress was governed by the two-year limitation in *R.C. 2305.10*: *Callaway v. Nu-Cor Auto. Corp., 2006-Ohio-1343, 166 Ohio App. 3d 56, 849 N.E.2d 62, 2006 Ohio App. LEXIS 1213 (Ohio Ct. App., Franklin County 2006)*.

The appropriate statute of limitations for claims of negligent infliction of emotional distress is *R.C. 2305.10*, even where the distress was inflicted by a hospital in the course of treating a patient: *Sutton v. Mt. Sinai Medical Ctr., 102 Ohio App. 3d 641, 657 N.E.2d 808, 1995 Ohio App. LEXIS 1243 (Ohio Ct. App., Cuyahoga County 1995)*.

A negligence claim asserting emotional distress, pain and suffering, humiliation, and loss of reputation is a claim for personal injuries and is governed by the statute of limitations set forth in *R.C. 2305.10*: *Lawyer's Coop. Pub. Co. v. Muething, 65 Ohio St. 3d 273, 603 N.E.2d 969, 1992 Ohio LEXIS 3151 (Ohio 1992)*.

Employer intentional tort

Trial court erred in holding that the statute of limitations period for an employer intentional tort was one year as the limitations period for such a suit was two years under *R.C. 2305.10*. Since the employee's suit was filed within two years of incident and since he re-filed his complaint within one-year pursuant to Ohio's savings statute, former *R.C. 2305.19*, the trial court improperly dismissed the suit on summary judgment. *Boyle v. Atlas Auto Crushers, Inc., 2009-Ohio-1717, 2009 Ohio App. LEXIS 1445 (Ohio Ct. App., Trumbull County 2009)*.

Employer liability

Because the employer was amenable to service of process within the entire two-year statute of limitations period, and the negligence complaint was filed over two years after the accident occurred, the victim's claim against the

employer was time barred. *Schisler v. Columbus Med. Equip., 2016-Ohio-3302, 2016 Ohio App. LEXIS 2161 (Ohio Ct. App., Franklin County 2016)*.

Trial court erred by granting the motion to dismiss for failure to state a claim because appellants filed their complaint within two years of the act complained of, under *R.C. 2305.10(A)*. Appellants alleged an employer-intentional tort under *R.C. 2745.01(C)*, by asserting that the employer removed the safety guard from the hammer press, with the deliberate intent of causing injury; because the act complained of was not itself an act of offensive touching, the claim did not sound in battery. *Tichon v. Wright Tool & Forge, 2012-Ohio-3147, 974 N.E.2d 743, 2012 Ohio App. LEXIS 2773 (Ohio Ct. App., Summit County 2012)*.

Trial court properly granted summary judgment for the employer because plaintiffs could not use the savings statute more than once to refile their complaint for an employer intentional tort. In the amendment of *R.C. 2309.19*, the changing of the word “an” to “any” did not change the rule of law that the savings statute could only be used once. *Eichler v. Metal & Wire Prods. Co., 2008-Ohio-3095, 2008 Ohio App. LEXIS 2578 (Ohio Ct. App., Columbiana County 2008)*.

Since an intentional tort claim by an injured person against an employer did not allege that the employer caused the harmful bodily contact by an overt, positive, or affirmative act, it was governed by the two-year statute of limitations established in *R.C. 2305.10*; because the initial claim was dismissed before the statute of limitations expired, the savings statute, *R.C. 2305.19*, did not apply to the re-filing of the claim which occurred after the statute of limitations lapsed. *Callaway v. Nu-Cor Auto. Corp., 2006-Ohio-1343, 166 Ohio App. 3d 56, 849 N.E.2d 62, 2006 Ohio App. LEXIS 1213 (Ohio Ct. App., Franklin County 2006)*.

Unless the circumstances of an action clearly indicate a battery or another statutory intentional tort, a cause of action alleging bodily injury as a result of an employer’s intentional tort will be governed by the two-year limitation in *R.C. 2305.10*. Plaintiffs clearly pleaded a Blankenship intentional tort. Because plaintiffs dismissed their tort claim before the statute of limitations expired, they could not invoke the protection of the savings statute in refiling their complaint after the statute of limitations lapsed: *Callaway v. Nu-Cor Auto. Corp., 2006-Ohio-1343, 166 Ohio App. 3d 56, 849 N.E.2d 62, 2006 Ohio App. LEXIS 1213 (Ohio Ct. App., Franklin County 2006)*.

Where decedent died from silica dust exposure, because decedent’s bodily injury was a substantial-certainty intentional tort, the injury was not an “occurrence” under the employer’s commercial umbrella liability policies at issue, and in the administratrix’s wrongful death action against the employer, summary judgment for the insurer was proper because the insurer had no duty to indemnify the employer. *Altvater v. Ohio Cas. Ins. Co., 2003-Ohio-4758, 2003 Ohio App. LEXIS 4296 (Ohio Ct. App., Franklin County 2003)*.

A cause of action based upon an employer intentional tort accrues when the employee discovers, or by the exercise of reasonable diligence should have discovered, the workplace injury and the wrongful conduct of the employer: *Norgard v. Brush Wellman, Inc., 2002-Ohio-2007, 95 Ohio St. 3d 165, 766 N.E.2d 977, 2002 Ohio LEXIS 1119 (Ohio 2002)*.

Unless the circumstances of an action clearly indicate a battery or any other enumerated intentional tort in the Revised Code, a cause of action alleging bodily injury as a result of an intentional tort by an employer pursuant to *Blankenship v. Cincinnati Milacron Chem., Inc. (1982), 69 OS2d 608, 23 OO3d 504, 433 NE2d 572*, will be governed by the two-year statute of limitations established in *R.C. 2305.10*: *Funk v. Rent-All Mart, Inc., 2001-Ohio-270, 91 Ohio St. 3d 78, 742 N.E.2d 127, 2001 Ohio LEXIS 457 (Ohio 2001)*.

R.C. 2305.10, not *R.C. 2305.11.2* and *2745.01*, applied where the cause of action arose prior to their repeal and reenactment: *Keith v. Spectrum Sportswear, 120 Ohio App. 3d 30, 696 N.E.2d 637, 1997 Ohio App. LEXIS 2389 (Ohio Ct. App., Summit County 1997)*.

R.C. 2305.10 is the statute of limitations for intentional tort claims brought after the invalidation of *R.C. 4121.80* and the enactment of *R.C. 2305.11.2*: *Malatesta v. Sharon Township Trustees, 87 Ohio App. 3d 719, 622 N.E.2d 1163, 1993 Ohio App. LEXIS 2619 (Ohio Ct. App., Franklin County 1993)*.

R.C. 2305.10 is the statute of limitations governing common law employer intentional tort claims. If a wrongful death claim is filed within the *R.C. 2125.02(D)* time period then the claim is not barred due to decedent's failure to timely pursue a related tort action while he was alive: *Anderson v. Brush-Wellman, Inc., 77 Ohio App. 3d 657, 603 N.E.2d 284, 1991 Ohio App. LEXIS 4840 (Ohio Ct. App., Ottawa County 1991)*.

Except where circumstances clearly indicate a battery or other intentional tort specifically enumerated in the Revised Code, any cause of action alleging bodily injury as a result of an intentional tort by an employer which arose prior to the effective date of *R.C. 4121.80* is governed by the two-year statute of limitations codified at *R.C. 2305.10* (*Hunter v. Shenango Furnace Co., 38 Ohio St. 3d 235, 527 N.E.2d 871, 1988 Ohio LEXIS 275 (Ohio 1988)*.

Estoppel

When motorists did not refile a negligence complaint against a driver and the driver's insurer within one year after the complaint was dismissed without prejudice, the motorists' participation in mediation with the insurer did not equitably estop the driver from asserting a statute of limitations defense because (1) the motorists did not show that the insurer made any factual misrepresentation as to the statute of limitations, and (2) the motorists had reason to know the motorists had to refile the complaint within one year in order to preserve the motorists' claim while engaging in mediation. *Young v. Leslie, 2009-Ohio-396, 2009 Ohio App. LEXIS 359 (Ohio Ct. App., Wayne County 2009)*.

Equitable estoppel does not prevent a defendant from asserting the statute of limitations as a defense when the plaintiff does not allege that acts of the defendant were designed to prevent the plaintiff from filing suit: *Doe v. Archdiocese of Cincinnati, 2008-Ohio-67, 116 Ohio St. 3d 538, 880 N.E.2d 892, 2008 Ohio LEXIS 18 (Ohio 2008)*.

An estoppel to the operation of a statute of limitations does not arise in an action for damages through personal injury when the facts show: (1) no fiduciary or trust relationship between the parties; (2) no fraud, misrepresentation, or false statement by the defendant; (3) no concealment of material facts; (4) no request by the defendant to withhold legal action pending negotiations for settlement; (5) no promise or agreement of the defendant not to plead the statute of limitations; (6) no promise by the defendant to pay the plaintiff's damages; (7) no conduct of the defendant showing, or tending to show, that plaintiff was induced by defendant's promises and conduct to believe that he did not need an attorney, or that he refrained from conferring with counsel and was kept from bringing an action within the two-year limitation because of the defendant's inducement: *Markese v. Ellis, 11 Ohio App. 2d 160, 40 Ohio Op. 2d 313, 229 N.E.2d 70, 1967 Ohio App. LEXIS 424 (Ohio Ct. App., Hamilton County 1967)*.

The driver of an automobile which causes an injury to another on a public highway, who, in violation of GC § 12606 (*R.C. 4549.02*), gives to the injured person the name of another instead of his own name, and thereby causes the injured person to institute suit against the wrong person, as a result of which the identity of the person driving said automobile is not learned by the injured person until the statute of limitations for the bringing of such action has expired, is estopped from asserting the statute of limitations as a defense in a subsequent action brought against him: *McCampbell v. Southard, 62 Ohio App. 339, 16 Ohio Op. 45, 23 N.E.2d 954, 27 Ohio Law Abs. 146, 1937 Ohio App. LEXIS 234 (Ohio Ct. App., Lorain County 1937)*.

Exposure to toxic gas

When an injury allegedly caused by exposure to toxic chlorine gas does not manifest itself immediately, a cause of action for that injury arises upon the date the plaintiff is informed by competent medical authority that he has been injured by exposure to the gas, or upon the date on which, by exercise of reasonable diligence, he should have become aware that he has been so injured, whichever date occurs first: *Liddell v. SCA Servs., 1994-Ohio-328, 70 Ohio St. 3d 6, 635 N.E.2d 1233, 1994 Ohio LEXIS 1615 (Ohio 1994)*.

Failure to pay insurance premiums

Where plaintiff's claim was that defendant bank's failure to pay her auto insurance premium as agreed led to cancellation of the policy, which, in turn, caused her to incur various other expenses, the claim was governed by *R.C. 2305.07*'s six-year statute of limitations rather than *R.C. 2305.10*'s two-year statute of limitations: *Porterfield v. Bank One Ohio Trust Co., 1997 Ohio App. LEXIS 4105 (Ohio Ct. App., Franklin County Sept. 9, 1997)*.

Fixtures

A utility pole and attached electrical equipment are fixtures for purposes of *R.C. 2305.09*: *Cleveland Elec. Illuminating Co. v. Continental Express, 106 Ohio Misc. 2d 19, 733 N.E.2d 328, 1999 Ohio Misc. LEXIS 70 (Ohio C.P. 1999)*.

In an action in tort, based upon a breach of the manufacturer's implied warranty of fitness, where the product has become a fixture and no personal injury is alleged, the statute of limitations provided by *R.C. 2305.10* (two years) is not applicable: *Taylor v. Multi-Flo, Inc., 69 Ohio App. 2d 19, 23 Ohio Op. 3d 20, 429 N.E.2d 1086, 1980 Ohio App. LEXIS 9677 (Ohio Ct. App., Hamilton County 1980)*.

Fraud-based claims

Where appellees' decedent allegedly incurred brain injuries due to impacts he received while playing football for appellant university, appellees' claims of fraudulent concealment and constructive fraud, like their negligence claim, were subject to this section's two-year statute of limitations because the alleged conduct underlying their fraudulent-concealment and constructive-fraud claims could not be separated from the virtually identical alleged conduct underlying their negligence claim, since each claim essentially alleged that appellants failed to satisfy a duty to inform the decedent about the risks of playing college football and to share material information about those risks. *Schmitz v. NCAA, 2018-Ohio-4391, 155 Ohio St. 3d 389, 122 N.E.3d 80, 2018 Ohio LEXIS 2614 (Ohio 2018)*.

Hospital, action against

Patient's cause of action against a hospital on a claim of negligent credentialing related to a physician's alleged malpractice was time-barred by *R.C. 2305.10*, as the claim was not filed until more than three years after the physician performed the surgery at issue. *Malcolm v. Duckett, 2011-Ohio-865, 2011 Ohio App. LEXIS 740 (Ohio Ct. App., Lucas County 2011)*.

A negligent credentialing cause of action is a claim arising out of a hospital's independent duty to the patient. This duty involves granting and continuing staff privileges only for competent physicians. Because this duty does not involve medical care or treatment, it is governed by the two-year statute of limitations found it *R.C. 2305.10*. A cause of action for negligent credentialing arises when the plaintiff knows or should know that he or she was injured as a result of the hospital's negligent credentialing procedures or practices: *Moore v. Burt, 96 Ohio App. 3d 520, 645 N.E.2d 749, 1994 Ohio App. LEXIS 3386 (Ohio Ct. App., Montgomery County 1994)*.

Negligent credentialing of a physician by a hospital is not "medical diagnosis, care, or treatment" within the meaning of *R.C. 2305.11*. An action against a hospital for bodily injury arising out of the negligent credentialing of a physician is subject to the two-year limitations period set forth in *R.C. 2305.10*. The period of limitations set forth in *R.C. 2305.10* commences to run when the victim knows or should have discovered that he or she was injured as a result of the hospital's negligent credentialing procedures or practices: *Browning v. Burt, 1993-Ohio-178, 66 Ohio St. 3d 544, 613 N.E.2d 993, 1993 Ohio LEXIS 1403 (Ohio 1993)* sub. nom. *Mitchell v. Burt, 67 Ohio St. 3d 1439, 617 N.E.2d 688, 1993 Ohio LEXIS 1717 (Ohio 1993)*, cert. denied, *510 U.S. 1111, 114 S. Ct. 1054, 127 L. Ed. 2d 375, 1994 U.S. LEXIS 1447 (U.S. 1994)*.

Where a patient brings an action against a hospital based upon respondeat superior resulting from the alleged negligence of a hospital employee (a nurse), the action is not governed by *R.C. 2305.11*, but by *R.C. 2305.10*, and it is not necessary that the patient join the nurse-employee as a defendant: *Holman v. Grandview Hospital & Medical Center, 37 Ohio App. 3d 151, 524 N.E.2d 903, 1987 Ohio App. LEXIS 10595 (Ohio Ct. App., Montgomery County 1987)*.

R.C. 2305.11(A) is the exclusive time frame for holding a hospital responsible for the alleged negligent acts of the doctors it employs. *R.C. 2305.10* is the appropriate statute for the hospital's other employees: *Brinson v. Bethesda Hospital, Inc., 29 Ohio Misc. 2d 8, 504 N.E.2d 496, 1985 Ohio Misc. LEXIS 113 (Ohio C.P. 1985)*.

The two-year statute of limitations for bodily injury (*R.C. 2305.10*), rather than the one-year statute of limitations for medical malpractice (*R.C. 2305.11*), is applicable as to both the employee-nurse and the employer-hospital in a personal injury action alleging the nurse's negligence: *Neilsen v. Barberton Citizens Hosp., 4 Ohio App. 3d 18, 446 N.E.2d 209, 1982 Ohio App. LEXIS 10952 (Ohio Ct. App., Summit County 1982)*.

The statute of limitations applicable to actions for medical malpractice against physicians is not the specific statute that is applicable to the limitation of action against hospitals for the negligence of their employees: the applicable statute of limitations for such actions against hospitals is *R.C. 2305.10*: *Simmons v. Riverside Methodist Hospital, 44 Ohio App. 2d 146, 73 Ohio Op. 2d 138, 336 N.E.2d 460, 1975 Ohio App. LEXIS 5752 (Ohio Ct. App., Franklin County 1975)*.

An action for negligence of a hospital is not barred by *R.C. 2305.11*, but is barred by the provisions of *R.C. 2305.10*: *Stewart v. Sachs, 27 Ohio Misc. 29, 55 Ohio Op. 2d 271, 266 N.E.2d 262, 1971 Ohio Misc. LEXIS 260 (Ohio C.P. 1971)*.

A negligence action against a hospital based on the doctrine of respondeat superior for the negligence of a nurse is subject to the two-year statute of limitations for bodily-injury actions: *Richardson v. Doe, 176 Ohio St. 370, 27 Ohio Op. 2d 345, 199 N.E.2d 878, 1964 Ohio LEXIS 970 (Ohio 1964)*.

Indemnity action

When alleged injured parties executed a release, when settling their claim against a motorist, which agreed to pay any subrogation claim their own insurer "might have" for medical expenses it had paid from the proceeds of the settlement, and the motorist's insurer was subsequently ordered, in inter-company arbitration, to pay these expenses to the parties' insurer, the parties did not breach the release because, at the time it was executed, the statute of limitations applicable to bodily injury claims had expired, so their insurer had no subrogation claim against the parties. *Nationwide Mut. Fire Ins. Co. v. Buckley, 2006-Ohio-5362, 2006 Ohio App. LEXIS 5339 (Ohio Ct. App., Medina County 2006)*.

Where the insurer of a truck made settlement payments to persons who suffered personal injury and property damage when brakes failed because of a defect allegedly attributable to the manufacturer, its indemnity action against the manufacturer was an action arising under an implied contract, and thus, under Ohio law, was governed by the six-year statute of limitations governing actions on contracts, and not by the two-year statute of limitations governing actions for bodily injury or injury to personal property: *Ohio Casualty Ins. Co. v. Ford Motor Co., 502 F.2d 138, 1974 U.S. App. LEXIS 7108 (6th Cir. Ohio 1974)*.

An action for breach of an implied contract for indemnification is governed by the six-year statute of limitations on actions upon oral contracts, and not the two-year statute of limitations on actions for personal injuries: *Stephenson v. Duriron Co., 292 F. Supp. 66, 21 Ohio Misc. 43, 48 Ohio Op. 2d 137, 1968 U.S. Dist. LEXIS 10142 (S.D. Ohio 1968)*, aff'd, *428 F.2d 387, 1970 U.S. App. LEXIS 8896 (6th Cir. Ohio 1970)*.

Passenger's insurer's submission of its subrogation claim to inter-company arbitration did not constitute a commencement of an action within the meaning of *R.C. 2305.17* because presentment of a creditor's claim to an estate did not constitute a commencement of an action within the meaning of *R.C. 2305.10* to toll the statute of limitations. Therefore, there was no error in the trial court's conclusion that the passenger's insurer's filing for inter-company arbitration failed to preserve its subrogation claim after the expiration of the statute of limitations and no error in trial court's conclusion that the passenger was entitled to summary judgment as a matter of law on the insurance company's indemnification claim. *Nationwide Mut. Fire Ins. Co. v. Delacruz, 2010-Ohio-6068, 2010 Ohio App. LEXIS 5113 (Ohio Ct. App., Hancock County 2010)*.

Injury to property

To determine whether a plaintiff's delay in bringing a trademark claim gives rise to the application of laches, courts in the Sixth Circuit look to the state-law statute of limitations for injury to personal property; because the suit was brought in the United States District Court for Ohio, *Ohio Rev. Code § 2305.10(A)* provided for a two-year statute of limitations. *Laukus v. Rio Brands, Inc., 391 Fed. Appx. 416, 2010 FED App. 0492N, 2010 U.S. App. LEXIS 16842 (6th Cir. Ohio 2010)*.

Savings statute in *R.C. 2305.19* did not apply to a property damage claim, which was subject to the two-year statute of limitations in *R.C. 2305.10(A)*, filed by a doctor's estate because the doctor had filed a prior action that was voluntarily dismissed; when the doctor refiled his complaint, which was later dismissed, in federal court in 2002, the savings statute applied, but it did not apply in the instant action as the savings statute could only be used once. *Estate of William A. Millhon v. Millhon Clinic, Inc., 2007-Ohio-7153, 2007 Ohio App. LEXIS 6249 (Ohio Ct. App., Franklin County 2007)*.

Insurer's complaint against appellee alleging breach of an oral contract was properly dismissed because the gist of the complaint was that the insured suffered property damage when appellee negligently filled the insured's oil tank at her house. The damage that the insured suffered at her residence did not result from a breach of the agreement

to fill the tank but, rather, the manner in which appellee filled the tank, causing damage to the insured's residence. *Ohio Mut. Ins. Co. v. Jerry Harris Distribs., 2007-Ohio-483, 2007 Ohio App. LEXIS 434 (Ohio Ct. App., Richland County 2007)*.

When a sophisticated commercial buyer sued for property damage caused by an allegedly defective product, claims relating to property other than the defective product itself were controlled by the statute of limitations contained in *R.C. 2305.10* for personal property and *R.C. 2305.09(D)* for real property. *JRC Holdings, Inc. v. Samsel Servs. Co., 2006-Ohio-2148, 166 Ohio App. 3d 328, 850 N.E.2d 773, 2006 Ohio App. LEXIS 2012 (Ohio Ct. App., Portage County 2006)*.

Where both a landowner and her neighbor testified to the time frame in which the neighbor's tortious actions occurred the landowner's filing of her complaint within two years of that time frame was not time-barred. *Hoover v. James, 2003-Ohio-4373, 2003 Ohio App. LEXIS 3887 (Ohio Ct. App., Ashland County 2003)*.

Where a subrogee insurer sues a bailee on an oral bailment contract for losses incurred through fire damage to personal property, the two-year limitation of *R.C. 2305.10* is applicable. This provision controls over the more general provision for actions based on oral contracts, *R.C. 2305.07*: *Underwriters at Lloyd's etc. v. Peerless Storage Co., 561 F.2d 20, 7 Ohio Op. 3d 463, 1977 U.S. App. LEXIS 11653 (6th Cir. Ohio 1977)*.

R.C. 2305.10 implies a positive, direct injury to the property of the plaintiff, not merely a contractual failure to render it effective for a known use: *Farbach Chemical Co. v. Commercial Chemical Co., 101 Ohio App. 209, 1 Ohio Op. 2d 146, 136 N.E.2d 363, 1956 Ohio App. LEXIS 693 (Ohio Ct. App., Hamilton County 1956)*.

Insurance

Insurer B had no existing subrogation claim when the insured executed an agreement in January 2017 to indemnify insurer A for medical payment liens because the automobile accident occurred in January 2014, the insured and insurer B had to file their claims by January 2016, insurer B did not participate in the insured's action against the at-fault driver, and insurer B did not file a civil action on its subrogation claim before the expiration of the two-year statute of limitations. *Nationwide Mut. Fire Ins. Co. v. Wooten, 2018-Ohio-4587, 2018 Ohio App. LEXIS 4898 (Ohio Ct. App., Pike County 2018)*.

Insurer B's initiation of an inter-company arbitration claim against insurer A for subrogation did not toll the two-year statute of limitations because it did not constitute a proper commencement of a civil action, and the insured did not participate in and had no notice of the arbitration proceeding, and thus could not be bound by it. *Nationwide Mut. Fire Ins. Co. v. Wooten, 2018-Ohio-4587, 2018 Ohio App. LEXIS 4898 (Ohio Ct. App., Pike County 2018)*.

Complaint and claim for relief which a driver's insurer filed against the estate of the deceased motorist, the tortfeasor, was barred by the applicable two-year statute of limitations because, although the accident victim, who was a passenger in the driver's car, timely commenced an action against the estate of the deceased motorist, the

insurer did not file its complaint against the estate within the two-year statute of limitations applicable to actions for bodily injury. Further, the insurer was not allowed to gain the benefit of the accident victim's compliance with the statute of limitations. *Adkins v. Orefice, 2012-Ohio-6033, 2012 Ohio App. LEXIS 5189 (Ohio Ct. App., Clark County 2012)*.

Accident victim's insurer timely filed a subrogation claim because the victim filed a personal injury claim within the statute of limitations, the estate of the deceased motorist whom the victim sued moved to add the insurer as a party after the two-year statute of limitations had expired, and, after the trial court granted the estate's motion, the insurer filed a complaint against the estate, the tortfeasor. Although the insurer's complaint was filed well after the statute of limitations had expired, the insurer gained the benefit of the victim's (its insured's) timely commencement of the action against the estate. *Adkins v. Orefice, 2012-Ohio-6033, 2012 Ohio App. LEXIS 5189 (Ohio Ct. App., Clark County 2012)*.

When part, but not all, of an insured's claim has been paid by the insurer, the insurer may properly be joined as a party if the insured's action was timely with respect to the statute of limitations: *Donegal Mut. Ins. v. White Consol. Indus., 2006-Ohio-1586, 166 Ohio App. 3d 569, 852 N.E.2d 215, 2006 Ohio App. LEXIS 1461 (Ohio Ct. App., Darke County 2006)*.

Insurer-subrogee's action against employee

Where an insurer-subrogee of an employer has settled an action of an injured person against the employer, based on the doctrine of respondeat superior, which injury was caused by the negligent act of an employee while in the scope of his employment, the insurer-subrogee's action against the deceased employee's administratrix arises ex contractu and not ex delicto, and is governed by *R.C. 2305.07*, not *R.C. 2305.10*: *American Ins. Group v. McCowin, 7 Ohio App. 2d 62, 36 Ohio Op. 2d 153, 218 N.E.2d 746, 1966 Ohio App. LEXIS 419 (Ohio Ct. App., Trumbull County 1966)*.

Joinder of party after statute has run

Because defendant received no notice of plaintiffs' claim within the prescribed limitation period and because defendant did not know, and from the record available to the court had no reason to know, that but for a mistake concerning identity, the action would have been brought against it within the prescribed limitation period, the plaintiffs failed to comply with *FedRCivP 15(c)*: *Gannon v. Parmeco, Inc., 695 F. Supp. 363, 1988 U.S. Dist. LEXIS 10577 (S.D. Ohio 1988)*.

A personal injury action by an automobile buyer's husband who joined the automobile manufacturer as a defendant more than two years after the accident occurred and who claimed that the negligent design of the automobile was a proximate cause of the accident producing the injuries, was barred by the two year Ohio statute of limitations:

Tomle v. New York C. Railroad, 234 F. Supp. 101, 4 Ohio Misc. 31, 32 Ohio Op. 2d 81, 1964 U.S. Dist. LEXIS 7258 (N.D. Ohio 1964).

Labor management reporting and disclosure act

Claims under either section 101(a)(1) or 101(a)(2) of the LMRDA bear more similarity to constitutional violations redressible under *42 USC § 1983* than to labor disputes, and are thus more appropriately governed by state residual personal injury statute of limitations: *Allgood v. Elyria United Methodist Home, 904 F.2d 373, 1990 U.S. App. LEXIS 8704 (6th Cir. Ohio 1990)*.

Landlord, action against

Where the complaint was filed two and one-half years after an electrical fire damaged the leased home, the tenant's claim for money damages for the destruction of her personal property was barred by the two-year limitation in *R.C. 2305.10*. The claim for breach of an implied warranty of habitability was governed by a four, six, or fifteen year statute of limitations: *Shorter v. Neapolitan, 2008-Ohio-6597, 179 Ohio App. 3d 608, 902 N.E.2d 1061, 2008 Ohio App. LEXIS 5498 (Ohio Ct. App., Mahoning County 2008)*.

Where a tenant was raped by an intruder, an action against the landlord under *R.C. 5321.04* was governed by the two-year limitation in *R.C. 2305.10*, rather than the six-year limitation in *R.C. 2305.07*: *Segal v. Zehman-Wolf Mgmt., Inc., 139 Ohio App. 3d 146, 743 N.E.2d 425, 2000 Ohio App. LEXIS 2645 (Ohio Ct. App., Cuyahoga County 2000)*.

A tenant's action against a landlord for breach of a contract to construct a building on leased premises, based on the collapse of the ceiling which caused damage to property and loss of profits, is subject to this section, the two-year Ohio statute of limitations on actions for injuring personal property, and the cause of action accrued on the date the ceiling collapsed: *Sears, Roebuck & Co. v. Cleveland Trust Co., 355 F.2d 705, 7 Ohio Misc. 279, 36 Ohio Op. 2d 32, 1966 U.S. App. LEXIS 7235 (6th Cir. Ohio 1966)*.

Loss of consortium

Four-year limitation under *R.C. 2305.09* applied to claims of loss of parental consortium: *Kahn v. CVS Pharm., Inc., 2006-Ohio-112, 165 Ohio App. 3d 420, 846 N.E.2d 904, 2006 Ohio App. LEXIS 87 (Ohio Ct. App., Hamilton County 2006)*.

Husband's action for loss of wife's services is not "action for bodily injury," within statute of limitations: *Kraut v. Cleveland R. Co., 132 Ohio St. 125, 7 Ohio Op. 226, 5 N.E.2d 324, 1936 Ohio LEXIS 220 (Ohio 1936)*.

Loss of property distinguished

In an action to recover damages for loss of personal property, as opposed to injury to personal property, the applicable statute of limitations is *R.C. 2305.09* (four years) and not *R.C. 2305.10* (two years): *Thomas v. Columbus, 39 Ohio App. 3d 53, 528 N.E.2d 1274, 1987 Ohio App. LEXIS 10658 (Ohio Ct. App., Franklin County 1987)*.

Maritime tort

The most analogous period of limitations, with regard to a personal injury action in admiralty for a maritime tort occurring as a result of a collision between the pleasure boat in which plaintiff was a passenger and defendant's vessel which was moored in the navigable portion of the Ohio river, was the Ohio two-year statute of limitation on an action for personal injury rather than the three-year statute governing actions for negligence under the Jones Act: *Keller v. Standard Sand & Gravel Co., 365 F. Supp. 1, 35 Ohio Misc. 85, 64 Ohio Op. 2d 351, 1973 U.S. Dist. LEXIS 14320 (S.D. Ohio 1973)*.

Military service

This section, applicable to an action to recover for personal injuries caused by negligence, does not commence running until the date of plaintiff's discharge from military service: *Linard v. Pennsylvania R. Co., 181 F.2d 342, 42 Ohio Op. 167, 59 Ohio Law Abs. 544, 1950 U.S. App. LEXIS 2609 (6th Cir. Ohio 1950)*.

Minor's claim against political subdivision

Plaintiffs were not entitled to invoke the tolling provisions, under *R.C. 2305.16*, due to the student's handicapped status because nothing in the record indicated that the hearing-impaired student suffered from "mental retardation or derangement" pursuant to *R.C. 5123.01(K)* or *R.C. 1.02(C)*, and there was no indication that he had any disability that rendered him unable to look into his affairs, properly consult with counsel, prepare and present his case, or assert and protect his rights in a court of justice. Thus, because the claims were not filed until three years after the student reached the age of majority, the applicable statutes of limitations, under *R.C. 2305.111* and *R.C. 2305.10*, operated to bar the claims for relief for sexual abuse, negligence, and negligent infliction of emotional distress. *Bradigan v. Strongsville City Schs, 2007-Ohio-2773, 2007 Ohio App. LEXIS 2571 (Ohio Ct. App., Cuyahoga County 2007)*.

After the statute of limitations in *R.C. 2744.04* was ruled unconstitutional as to minors, *R.C. 2305.10*, the specific statute governing bodily injury claims, not *R.C. 2305.09(D)*, governed a minor's claim against a political subdivision for personal injuries: *Looman v. Bell-Herron Middle Sch., 129 Ohio App. 3d 39, 716 N.E.2d 1197, 1998 Ohio App.*

LEXIS 3218 (Ohio Ct. App., Carroll County), dismissed, *84 Ohio St. 3d 1432, 702 N.E.2d 1212, 1998 Ohio LEXIS 3436 (Ohio 1998)*.

Minors

A minor who was injured prior to the amendment lowering the age of majority had only two years from the date of such amendment or two years after his eighteenth birthday, whichever was later, to bring suit: *Cook v. Matvejs, 56 Ohio St. 2d 234, 10 Ohio Op. 3d 384, 383 N.E.2d 601, 1978 Ohio LEXIS 684 (Ohio 1978)*.

Negligence

Storage unit rental facility was entitled to summary judgment on a renter's negligence claim because the renter admitted that she discovered her belongings in the unit were moldy on August 11, 2015, but filed the complaint on September 2, 2017, which was not within the two-year statute of limitations, and, as such, the renter's negligence claim was time-barred. *Hopkins v. Car Go Self Storage, 2019-Ohio-1793, 135 N.E.3d 1229, 2019 Ohio App. LEXIS 1869 (Ohio Ct. App., Franklin County 2019)*.

As a complaint by a nursing home resident's estate administrator, arising from the resident's broken leg that occurred while she was moved in the course of changing her bed linens, stated a claim for ordinary negligence against the home, dismissal based on expiration of the one-year period applicable to medical claims was error because the two-year period applied. *Haskins v. 7112 Columbia, Inc., 2014-Ohio-4154, 20 N.E.3d 287, 2014 Ohio App. LEXIS 4068 (Ohio Ct. App., Mahoning County 2014)*.

Inmate's claim of dental negligence against the private operator of the prison that employed the dentist was properly dismissed because the operator could not be held vicariously liable for the dentist's alleged negligence when the dentist's potential liability was barred by the expiration of the statute of limitations. *Erickson v. Management & Training Corp., 2013-Ohio-3864, 2013 Ohio App. LEXIS 4029 (Ohio Ct. App., Ashtabula County 2013)*.

Claim of negligence by a realtor was not subject to the one-year malpractice statute of limitations under *R.C. 2305.11* because it is well-established common law of Ohio that malpractice is limited to the negligence of physicians and attorneys. In a long line of cases interpreting *R.C. 2305.11*, Ohio courts have consistently refused to extend the statute of limitations to include malpractice claims that are neither specifically enumerated in the terms of the statute nor included in the common law definition of malpractice; thus, other actions of professional negligence are treated as negligence and governed by the statute of limitations in either *R.C. 2305.09* or *2305.10*. *Carpenter v. Long, 2011-Ohio-5414, 196 Ohio App. 3d 376, 963 N.E.2d 857, 2011 Ohio App. LEXIS 4436 (Ohio Ct. App., Greene County 2011)*.

There was no error in dismissing the negligence and intentional tort claims under Civ.R. 12(B)(6) for failure to state a claim because they were barred by the two-year statute of limitations under *R.C. 2305.10*. The volunteer boy's club leader asserted that she suffered a traumatic brain injury as a result of a fall that occurred on July 4, 2002 but filed her claim nearly five years later. *Swanson v. BSA, 2008-Ohio-1692, 2008 Ohio App. LEXIS 1458 (Ohio Ct. App., Vinton County 2008)*, cert. denied, *556 U.S. 1170, 129 S. Ct. 1915, 173 L. Ed. 2d 1065, 2009 U.S. LEXIS 2695 (U.S. 2009)*.

Injured party's suit against a driver and an owner was not timely commenced where she filed the suit one month after her injury, but obtained a stay and did not attempt to serve the driver and the owner until after the two-year limitations period had expired; the injured party's instruction to the clerk to serve defendants was the equivalent of a refiling of the complaint, but the statute of limitations had expired. *Pewitt v. Roberts, 2005-Ohio-4298, 2005 Ohio App. LEXIS 3914 (Ohio Ct. App., Cuyahoga County 2005)*.

Negligent diagnosis of mental incapacity

The discovery rule contained in *R.C. 2305.10* does not apply to a cause of action for negligent diagnosis of mental incapacity. That provision of *R.C. 2305.10* was specifically enacted to determine the accrual of a cause of action based on injury caused by exposure to asbestos: *Lewarski v. Columbus Developmental Center, 40 Ohio App. 3d 76, 531 N.E.2d 1341, 1987 Ohio App. LEXIS 10720 (Ohio Ct. App., Franklin County 1987)*.

Negligent entrustment

Injured party's suit against an owner was properly dismissed, even though the owner did not file a motion to dismiss, as the injured party showed in her response to a driver's motion to dismiss that the statute of limitations had expired for the negligent entrustment and vicarious liability claims against the owner; the negligent entrustment and vicarious liability claims against the owner were derivative of the claims against the driver and were subject to the same two-year statute of limitations. *Pewitt v. Roberts, 2005-Ohio-4298, 2005 Ohio App. LEXIS 3914 (Ohio Ct. App., Cuyahoga County 2005)*.

Negligent hiring

Because the statute of limitations for a negligent hiring, supervision, or retention claim was not affected by the statute of limitations governing the underlying legally wrongful conduct of the employee, the applicable statute of limitations was two years. *Evans v. Akron Gen. Med. Ctr., 2020-Ohio-5535, 163 Ohio St. 3d 284, 170 N.E.3d 1, 2020 Ohio LEXIS 2681 (Ohio 2020)*.

Inmate's claim against the private operator of the prison that employed a dentist who allegedly performed negligent dental work on the inmate was properly dismissed because the claim for negligent hiring and/or retention was

barred by the applicable two-year limitations period, and it was also not pled with particularity. *Erickson v. Management & Training Corp., 2013-Ohio-3864, 2013 Ohio App. LEXIS 4029 (Ohio Ct. App., Ashtabula County 2013)*.

Executor's claims for negligent hiring and supervision were barred by the two-year statute of limitations in *R.C. 2305.10* as the executor should have been alerted more than two years before filing suit that an improper act had taken place. *Hicks v. Garrett, 2012-Ohio-3560, 2012 Ohio App. LEXIS 3148 (Ohio Ct. App., Stark County 2012)*.

Trial court properly dismissed an employee's negligent hiring, training, retention, and supervision claim as time-barred as the employee alleged that while he was a contract employee at a nuclear power station, the employer maintained a staff and supervisors and managers which were negligently trained, retained, and supervised; thus, the alleged negligence was discovered while the employee was working at the power station or, at the latest, when his contract was terminated, more than two years before he filed his claim. *Keisler v. FirstEnergy Corp., 2006-Ohio-476, 2006 Ohio App. LEXIS 414 (Ohio Ct. App., Ottawa County 2006)*.

Where a plaintiff brings an action against a corporation for injuries sustained due to an alleged assault and battery upon the plaintiff by two corporate employees, and plaintiff's cause of action against the corporation is based upon the corporation's alleged negligence in hiring and maintaining in its employ the two persons in question, it is error for the trial court to dismiss the action against the corporation pursuant to *R.C. 2305.11(A)*, even though the complaint was filed more than one year after the cause of action accrued. The two-year statute of limitations for negligence, rather than the one-year statute of limitations for assault and battery, is applicable to an action against the corporation based upon its own negligence, rather than liability imputed from its employees: *Grimm v. White, 70 Ohio App. 2d 201, 24 Ohio Op. 3d 257, 435 N.E.2d 1140, 1980 Ohio App. LEXIS 9732 (Ohio Ct. App., Franklin County 1980)*.

Nonresident motor vehicle operator

The operation of a motor vehicle within the state by a nonresident owner or operator is the central fact upon which the provisions of GC § 6308-1 (*R.C. 2703.20*) are predicated, and an action to recover damages resulting from the operation of a motor vehicle under such circumstances may be brought within the general limitation of two years, as provided in this section: *Canaday v. Hayden, 80 Ohio App. 1, 35 Ohio Op. 404, 74 N.E.2d 635, 1947 Ohio App. LEXIS 708 (Ohio Ct. App., Lucas County 1947)*.

Not grounded in tort

Trial court erred by entering summary judgment on the breach of contract claim because, since it was not grounded in tort, it was not barred by the statute of limitations and the decedent's family alleged a plethora of facts that, if true, tended to show that they did not receive the benefit of their bargain and did not receive the goods or services for

which they contracted. *Clay v. Shriver Allison Courtley Co., 2018-Ohio-3371, 118 N.E.3d 1027, 2018 Ohio App. LEXIS 3664 (Ohio Ct. App., Mahoning County 2018)*.

Nursing homes

Where the daughter's action for personal or bodily injury suffered by her mother while under the care of a long-term nursing care facility was not an action created by statute, it was barred by the two-year statute of limitations; *R.C. 3721.13(A)(1)*,(2),(3),(5) did not provide a cause of action that would not have existed but for the statute because the same action existed at common law. *Shelton v. LTC Mgmt. Servs., 2004-Ohio-507, 2004 Ohio App. LEXIS 469 (Ohio Ct. App., Highland County 2004)*.

Parent signing license application, action against

One injured by reason of the negligence of a minor in the operation of an automobile, who sues such minor for the injury received, and obtains a judgment against the minor which is partially satisfied, and then institutes an action as provided by *R.C. 4507.07*, against the parent who signed the application for an operator's license, is bound by the two-year limitation for bringing an action as prescribed by *R.C. 2305.10*, and not by *R.C. 2305.07*, relating to an action upon a liability created by statute: *Levin v. Bourne, 117 Ohio App. 269, 24 Ohio Op. 2d 63, 192 N.E.2d 114, 1962 Ohio App. LEXIS 718 (Ohio Ct. App., Summit County 1962)*.

Parents, statutory action against

Trial court did not abuse its discretion because it had multiple reasonable bases for denying the car accident victims' motion for leave to file an amended complaint; they did not timely seek leave to amend the complaint as the statute of limitations had expired and their request for leave came after the father moved for summary judgment. The trial court also found that, whether leave was sought under Civ.R. 15 or Civ.R. 21, the statute of limitations in *R.C. 2305.10(A)* could be circumvented and the driver could not be added as a party. *Yates v. Hassell, 2012-Ohio-328, 2012 Ohio App. LEXIS 274 (Ohio Ct. App., Franklin County 2012)*.

The two-year statute of limitations set forth in *R.C. 2305.10* applies to civil actions to recover compensatory damages for injury to property brought under *R.C. 3109.09*: *Rudnay v. Corbett, 53 Ohio App. 2d 311, 7 Ohio Op. 3d 416, 374 N.E.2d 171, 1977 Ohio App. LEXIS 7000 (Ohio Ct. App., Cuyahoga County 1977)*.

Physician, action against

A claim that a physician negligently performed the tests necessary to obtain social security disability benefits, resulting in personal injury to the plaintiff, is subject to the two-year limitation of *R.C. 2305.10*, rather than the one-

year limitation of (former) *R.C. 2305.11*: *Smith v. Katzman, 81 Ohio App. 3d 682, 611 N.E.2d 1013, 1992 Ohio App. LEXIS 3292 (Ohio Ct. App., Cuyahoga County 1992)*.

Action for injuries by railroad employee, sustained while being physically examined by railroad physician, is subject to limitation of action for bodily injury, not for malpractice: *New York C. R. Co. v. Wiler, 124 Ohio St. 118, 177 N.E. 205, 10 Ohio Law Abs. 123, 1931 Ohio LEXIS 271 (Ohio 1931)*.

Practice and procedure.

Trial court did not err in granting a motion to dismiss a personal injury complaint because the court did not need to rely on information outside the complaint to find that the accident victim's claims were time-barred under the applicable statute of limitations, as the complaint did not reference an earlier filed complaint by the victim. The court did not need to provide notice of conversion to a motion for summary judgment because the court did not need to consider matters outside the complaint to determine that it was time-barred. *Rankin v. Rosolowski, 2016-Ohio-7490, 2016 Ohio App. LEXIS 4430 (Ohio Ct. App., Cuyahoga County 2016)*.

Premises liability

Gas station owner was entitled to summary judgment due to the expiration of the statute of limitations because the fall victim failed to comply with the rule requirements and thus, failed to meet the threshold requirements for the proper commencement of an action against a fictitiously-named defendant. Thus, she was precluded from invoking the relation-back provisions and her action against the owner was time-barred. *Ludwigsen v. Lakeside Plaza, LLC, 2014-Ohio-5493, 2014 Ohio App. LEXIS 5320 (Ohio Ct. App., Madison County 2014)*.

In plaintiff's suit to recover for injuries he suffered during an assault at a homeless shelter, the trial court did not err by dismissing his complaint against defendant for failure to state a claim because the complaint was silent as to the shelter's relationship with the named defendant. Because plaintiff did not file suit until three years after the alleged attack, his premises liability claim was barred by the statute of limitations set forth in *R.C. 2305.10(A)*. *2021 Ohio 3219, 2021 Ohio App. LEXIS 3143*.

Products liability

Plaintiff's action against a drug manufacturer for an allegedly defective product and/or failure to warn was time-barred under the two-year statute of limitations, as the latest date that the drug could have been administered was when plaintiff had surgery in 2012, and plaintiff did not file her action until 2015. *Rodgers v. Genesis Healthcare Sys., 2016-Ohio-721, 2016 Ohio App. LEXIS 628 (Ohio Ct. App., Muskingum County 2016)*.

Defendant seller indisputably conducted a business for the purpose of selling mowers and did place the mower into the stream of commerce, and the seller was a "supplier" as defined by *R.C. 2307.71(A)(15)(a)(i)*. The ten-year statute of repose under *R.C. 2305.10(C)(1)* applied and barred plaintiff's products liability claims. *Jones v. Walker Mfg. Co., 2012-Ohio-1546, 2012 Ohio App. LEXIS 1365 (Ohio Ct. App., Cuyahoga County 2012)*.

"Repair" is distinct from "reconditioning," particularly when the buyer purchases a product in "used" condition as opposed to being reconditioned. The buyer of a rebuilt or reconditioned product has the expectation that the product will perform as new; the buyer of a ten-year old used product has no such expectation. *Jones v. Walker Mfg. Co., 2012-Ohio-1546, 2012 Ohio App. LEXIS 1365 (Ohio Ct. App., Cuyahoga County 2012)*.

Trial court properly granted summary judgment to suppliers of diacetyl, a butter-flavoring chemical, on statute of limitations grounds as the employees' suit, alleging claims of defective design, strict liability for failure to warn, and negligence, was not filed within two years after their cause of action accrued, as required by *R.C. 2305.10*, and there was no evidence of any wrongful conduct on the part of the suppliers that would have operated to toll the statute. *Doane v. Givaudan Flavors Corp., 2009-Ohio-4989, 184 Ohio App. 3d 26, 919 N.E.2d 290, 2009 Ohio App. LEXIS 4268 (Ohio Ct. App., Hamilton County 2009)*.

There were no genuine issues of material fact as to whether the victim's product liability claim was barred by the statute of limitations or whether the statute of limitations should have been tolled because the cognizable event triggering the statute of limitations was the roll-over accident which resulted in the victim's injuries, not the knowledge of a letter sent by the company warning of a known dangerous defect. Because the victim knew when he was injured, it was not a case of a latent injury or a latent defect. *Norris v. Yamaha Motor Corp. U.S.A., 2009-Ohio-4158, 2009 Ohio App. LEXIS 3503 (Ohio Ct. App., Stark County 2009)*.

Trial court erred in dismissing property owners' breach of implied warranty claim against an electrical apparatus manufacturer, arising from a malfunction in the apparatus that resulted in fire damage to the owners' homes, as the trial court had erroneously applied the two-year limitations period of *R.C. 2305.10(A)* and determined that the claim was barred; rather, the four-year limitations period of *R.C. 2305.09* was applicable where damages to real property were involved. *Doty v. Fellhauer Elec., Inc., 2008-Ohio-1294, 175 Ohio App. 3d 681, 888 N.E.2d 1138, 2008 Ohio App. LEXIS 1091 (Ohio Ct. App., Ottawa County 2008)*.

Although the 2005 amendment to *R.C. 2307.71* clearly states its intent to abrogate all common law product liability claims, it does not provide that causes of action accruing prior to its effective date are subject to the amendment; thus it cannot be applied retroactively. *R.C. 2305.09(D)*, rather than *R.C. 2305.10*, was the applicable statute of limitations for a breach of implied warranty claim for damages to real property: *Doty v. Fellhauer Elec., Inc., 2008-Ohio-1294, 175 Ohio App. 3d 681, 888 N.E.2d 1138, 2008 Ohio App. LEXIS 1091 (Ohio Ct. App., Ottawa County 2008)*.

To the extent that former *R.C. 2305.10(F)* now (G) affects an accrued substantive right by providing an unreasonably short period of time in which to file suit for certain plaintiffs whose injuries occurred before the

amendments to R.C. 2305.10 enacted by 2004 Am.Sub.S.B. No. 80 became effective, and whose causes of action therefore accrued for purposes of R.C. 2305.10(C), former R.C. 2305.10(F) is unconstitutionally retroactive under Ohio Const. art. II, ??28: Groch v. GMC, 2008-Ohio-546, 117 Ohio St. 3d 192, 883 N.E.2d 377, 2008 Ohio LEXIS 391 (Ohio 2008).

R.C. 2305.10(C) and former 2305.10(F) do not violate the open courts provision (*Ohio Const. art. I, § 16*), the takings clause (*Ohio Const. art. I, § 19*), the due process and remedies clauses (*Ohio Const. art. I, § 16*), the equal protection clause (*Ohio Const. art. I, § 2*), or the one subject rule (Ohio Const. art. II, 15(D), and are therefore facially constitutional: Groch v. GMC, 2008-Ohio-546, 117 Ohio St. 3d 192, 883 N.E.2d 377, 2008 Ohio LEXIS 391 (Ohio 2008).

When a consumer brought a personal injury action against a vehicle manufacturer more than ten years after the vehicle was first sold, and claimed that applying the ten-year statute of repose in R.C. 2305.10(C)(1) to bar her claim deprived her of a remedy, contrary to *Ohio Const. art. I, § 16*, while it appeared that the statute, which was enacted after the consumer's claim accrued, might retroactively deprive her of a vested right, contrary to Ohio Const. art. II, § 28, her constitutional claim could not be considered because it was raised for the first time on appeal. Studer v. Volvo Cars of N. Am., LLC, 2007-Ohio-890, 2007 Ohio App. LEXIS 795 (Ohio Ct. App., Portage County 2007).

Summary judgment was proper where a consumer 's injury from the explosion of his brand-new stove was immediate and did not invoke the discovery rule to toll the two-year statute of limitations. Braxton v. Peerless Premier Appliance, Co., 2003-Ohio-2872, 2003 Ohio App. LEXIS 2596 (Ohio Ct. App., Cuyahoga County 2003).

Patient with defective spinal catheter and connected drug pump installed was or should have been aware of injury at the time the catheter was replaced; therefore, the statute of limitations began to run at that time: Dunlap v. Medtronic, Inc., 47 F. Supp. 2d 888, 1999 U.S. Dist. LEXIS 5674 (N.D. Ohio 1999).

The two-year limitation applied to the product liability claim despite the earlier, overruled appellate decision applying a six-year limitation: Davis v. Becton Dickinson & Co., 127 Ohio App. 3d 203, 711 N.E.2d 1098, 1998 Ohio App. LEXIS 1166 (Ohio Ct. App., Cuyahoga County 1998).

The defendants were not entitled to summary judgment on the product liability claim where a trier of fact could conclude that the plaintiff did not discover the cause of the injury until he received a medical diagnosis: Pulido v. UPS Gen. Servs. Co., 31 F. Supp. 2d 809, 1998 U.S. Dist. LEXIS 19306 (D. Or. 1998).

In order for a statutory cause of action to be an action "upon a liability created by statute" under R.C. 2305.07, that cause of action must be one that would not exist but for the statute. Any statutory "modification, alteration or conditioning" of a common-law cause of action which falls short of creating a previously unavailable cause of action is not an action "upon a liability created by statute." Because R.C. 2307.73 does not provide a cause of action that would not exist but for the statute, causes of action brought pursuant to R.C. 2307.73 are not governed by the six-

year statute of limitations provided in *R.C. 2305.07*: *McAuliffe v. Western States Import Co., 1995 Ohio 201, 72 Ohio St. 3d 534, 651 N.E.2d 957, 1995 Ohio LEXIS 1456 (Ohio 1995)*.

When a sophisticated commercial buyer sues for property damage caused by an allegedly defective product, claims relating to property other than the defective product itself are controlled by the statute of limitations contained in *R.C. 2305.10* for personal property and *R.C. 2305.09(D)* for real property: *Sun Ref. & Mktg. Co. v. Crosby Valve & Gage Co., 1994-Ohio-369, 68 Ohio St. 3d 397, 627 N.E.2d 552, 1994 Ohio LEXIS 375 (Ohio 1994)*.

For purposes of the discovery rule, plaintiff's workers' compensation claim precluded any assertion that he was unaware of being injured by the defendant chemical manufacturers' products: *Meeker v. American Torque Rod, Inc., 79 Ohio App. 3d 514, 607 N.E.2d 874, 1992 Ohio App. LEXIS 2286 (Ohio Ct. App., Franklin County 1992)*.

In a products liability action against an intra-uterine device manufacturer, the plaintiff's cause of action does not accrue until she is informed that she will not be able to conceive: *Cacciacarne v. G.D. Searle & Co., 908 F.2d 95, 1990 U.S. App. LEXIS 12034 (6th Cir. Ohio 1990)*.

A cause of action accrues in latent defect/property damage cases when: 1. the latent defect manifests itself into actual damage; 2. the injured party was aware or should have been aware that the damage was related to the acts of the manufacturer or seller; and 3. the damage put a reasonable person on notice of need for further inquiry as to the cause of the damage: *St. Paul Fire & Marine v. R. V. World, 62 Ohio App. 3d 535, 577 N.E.2d 72, 1989 Ohio App. LEXIS 1282 (Ohio Ct. App., Summit County 1989)*.

Absent privity, a plaintiff cannot bring a contract action for breach of implied warranty. Instead, his remedy is limited to a tort cause of action: *St. Paul Fire & Marine v. R. V. World, 62 Ohio App. 3d 535, 577 N.E.2d 72, 1989 Ohio App. LEXIS 1282 (Ohio Ct. App., Summit County 1989)*.

A contractor's cross-claim against defendant manufacturer of defective bricks used in construction of plaintiff's department store was governed by *R.C. 2305.10* rather than *R.C. 2305.09*, since the injury complained of, i.e., potential money damages awarded against it in plaintiff's suit, was on injury to personal property; such injury arose, for purposes of the statute, when the contractor knew or should have known of the pendency of the products liability action: *Adcor Realty Corp. v. Mellon-Stuart Co., 450 F. Supp. 769, 1978 U.S. Dist. LEXIS 19566 (N.D. Ohio 1978)*.

In a products liability case in Ohio where the action is based upon the tortious breach of duty assumed by the manufacturer-seller of a product (i.e., implied warranty), a two-year statute of limitations is applicable: *Lee v. Wright Tool & Forge Co., 48 Ohio App. 2d 148, 2 Ohio Op. 3d 115, 356 N.E.2d 303, 1975 Ohio App. LEXIS 5894 (Ohio Ct. App., Summit County 1975)*.

An equipment buyer's cause of action alleging that the manufacturer was careless and negligent in its representations and in the design of the manufacture of the equipment is an action for injury to personal property under the two-year Ohio statute of limitations: *Mahalsky v. Salem Tool Co., 461 F.2d 581, 65 Ohio Op. 2d 391, 1972 U.S. App. LEXIS 9007 (6th Cir. Ohio 1972)*.

Without privity an action in tort for injury to personal property due to a defective product can be maintained for breach of an implied warranty, and it is subject to the two-year statute of limitations under *R.C. 2305.10*: *Mahalsky v. Salem Tool Co., 461 F.2d 581, 65 Ohio Op. 2d 391, 1972 U.S. App. LEXIS 9007 (6th Cir. Ohio 1972)*.

An action in tort for damage to personal property, which is based upon the breach of a duty assumed by the manufacturer-seller of a product by reason of the manufacturer's implicit representation of good and merchantable quality and fitness for the intended use when he sells the product, is limited as to the time in which it shall be brought by the provisions of *R.C. 2305.10*: *United States Fidelity & Guaranty Co. v. Truck & Concrete Equipment Co., 21 Ohio St. 2d 244, 50 Ohio Op. 2d 480, 257 N.E.2d 380, 1970 Ohio LEXIS 462 (Ohio 1970)*.

An action for damages sustained by plaintiff in drinking milk which allegedly contained a piece of glass was an action for breach of warranty and for a liability created by the statute respecting adulterated milk, and was not governed by the two year statute of limitations, but by the six year statute of limitations provided for a liability created by statute: *Jarmol v. Tas-Tee Catering, Inc., 120 Ohio App. 77, 26 Ohio Op. 2d 362, 193 N.E.2d 157, 93 Ohio Law Abs. 413, 1963 Ohio App. LEXIS 649 (Ohio Ct. App., Cuyahoga County 1963)*.

Product safety act

The differences between a Consumer Product Safety Act action and a "garden variety" tort action contemplated by *R.C. 2305.10* are sufficient to disclaim application of the latter statute: *Payne v. A.O. Smith Corp., 578 F. Supp. 733, 1983 U.S. Dist. LEXIS 11756 (S.D. Ohio 1983)*, disapproved, *Drake v. Honeywell, Inc., 797 F.2d 603, 1986 U.S. App. LEXIS 27393 (8th Cir. Minn. 1986)*.

Real party in interest

Trial court did not abuse its discretion when it denied a manufacturer's motion for a new trial in a product liability suit brought against it on the ground that the jury verdict in favor of the consumers' insurer was contrary to law, in that the insurer failed to bring suit in its own name as the real party in interest before the two-year statute of limitations found in *R.C. 2305.10(A)* had expired, because the consumers asserted, and the manufacturer did not dispute, that although the insurer paid them approximately $141,000, their claims relating to the fire that destroyed their house were not fully paid. As a result, the consumers remained the real party in interest, and the insurer's claims were derivative claims that could be pursued on behalf of the consumers but only to the extent of the insurer's subrogation interest. *Donegal Mut. Ins. v. White Consol. Indus., 2006-Ohio-1586, 166 Ohio App. 3d 569, 852 N.E.2d 215, 2006 Ohio App. LEXIS 1461 (Ohio Ct. App., Darke County 2006)*.

Realty, damages resulting from improvements to

The limitations under *R.C. 2305.09* and *2305.10* may be applied to an action for damages resulting from an improvement to realty even though the action is timely under *R.C. 2305.13.1*: *Dreher v. Willard Constr. Co., 93 Ohio App. 3d 443, 638 N.E.2d 1079, 1994 Ohio App. LEXIS 1600 (Ohio Ct. App., Lorain County 1994)*.

Relation back

Although the medical corporation's motion to dismiss should have put the alleged victim of sexual assault by a doctor employed by the corporation on notice that her attempted service was insufficient, she failed to correct the error by complying with the rule despite having more than five months to do so and the corporation affirmatively raised the defense of insufficiency of process in its motion. The victim did not meet her burden to demonstrate the existence of a "genuine issue of material fact" with regard to the statute of limitations. *Evans v. Akron Gen. Med. Ctr., 2018-Ohio-3031, 2018 Ohio App. LEXIS 3272 (Ohio Ct. App., Summit County 2018)*.

Trial court properly dismissed plaintiff's personal injury suit as time-barred; as her timely filed original complaint was a nullity because she had not obtained leave of the receivership court to file suit against the receiver, her amended complaint, filed after expiration of the limitations period, could not relate back to the original complaint. *PNC Bank, N.A. v. J & J Slyman, L.L.C., 2015-Ohio-2951, 2015 Ohio App. LEXIS 2853 (Ohio Ct. App., Cuyahoga County 2015)*.

Trial court lacked jurisdiction to hear an accident victim's second complaint because the victim failed to obtain service of the victim's refiled complaint upon a motorist within one year after dismissing the victim's timely filed first complaint voluntarily. *Furney v. Wynn, 2011-Ohio-4000, 2011 Ohio App. LEXIS 3363 (Ohio Ct. App., Franklin County 2011)*.

Trial court properly determined that a motorist's claim, seeking to recover from an electric company for injuries he sustained in a car accident, was time-barred as he had not obtained service, as required by Civ.R. 3(A), upon the company within one year of filing the original complaint, in which he named the electric company as a John Doe; thus, he could not avoid the statute of limitations bar in *R.C. 2305.10* on the ground that the amended complaint related back to the original complaint pursuant to Civ.R. 15(D), *Hummons v. City of Dayton, 2009-Ohio-5398, 2009 Ohio App. LEXIS 4554 (Ohio Ct. App., Montgomery County 2009)*.

R.C. 15(C), read in pari materia with Civ.R. 3(A), allowed the automobile accident victims' amended complaint for personal injuries that substituted the defendant, to relate back to the filing date of the original complaint. The driver was provided adequate notice of the victims' suit because a police traffic crash report established that the driver knew on December 15, 2000, that she had been involved in an accident and that she might have to prepare a defense, and an insurance letter showed that the driver knew or should have known through her insurance carrier, to whom all correspondence related to the accident was supposed to have come, that, but for a mistake concerning her identity, a legal action might be instituted against her. *Baeslach v. Dancy, 2004-Ohio-4091, 2004 Ohio App. LEXIS 3725 (Ohio Ct. App., Cuyahoga County 2004)*.

Rental vehicle, action for damage to

An action to recover damages for injury to a motor vehicle rented in writing by the plaintiff to the defendant and allegedly caused by the defendant in operating the vehicle in violation of law and the rental contract is governed by *R.C. 2305.10* providing that an action for injuring personal property shall be brought within two years after the cause thereof arose, and not by *R.C. 2305.06*, providing for a fifteen-year limitation for bringing an action on a written contract: *National Car Rentals v. Allen, 1 Ohio App. 2d 321, 30 Ohio Op. 2d 316, 204 N.E.2d 554, 1964 Ohio App. LEXIS 550 (Ohio Ct. App., Franklin County 1964)*.

Savings clause

Motorist was not entitled to summary judgment, based upon the expiration of the two-year statute of limitations in *R.C. 2305.10(A)*, because the motor vehicle accident victim voluntarily dismissed the victim's cause of action under Civ.R. 41(A)(1)(a), when the victim failed to obtain service within one year, as required by Civ.R. 3(A), and then refiled the victim's cause of action within the requisite one-year period of time under *R.C. 2305.19(A)*. *Lewis v. Howard, 2008 Ohio App. LEXIS 5918 (Ohio Ct. App., Allen County Dec. 22, 2008)*.

Savings statute

Plaintiffs' initial action, filed within the two-year statute of limitations, was dismissed based on lack of service on defendant and was refiled under the one-year savings statute; as plaintiffs did not obtain service on defendant within one year of the commencement of the second action, as required by Civ.R. 3(A), the trial court properly dismissed that action with prejudice. *Khatib v. Peters, 2017-Ohio-95, 77 N.E.3d 461, 2017 Ohio App. LEXIS 108 (Ohio Ct. App., Cuyahoga County 2017)*.

Plaintiffs' complaint in a personal injury action was time-barred because it was not filed within the two-year time period provided in this statute; the savings statute, *R.C. 2305.19*, did not apply because, while plaintiffs' original complaint was "filed" within the statute of limitations, that suit was never "commenced," as defined by Civ.R. 3(A), because the defendant was not timely served. *Sheldon v. Burke, 2016-Ohio-941, 2016 Ohio App. LEXIS 974 (Ohio Ct. App., Cuyahoga County 2016)*.

Summary judgment was properly granted for the driver; application of *R.C. 2305.15(A)* to the driver, a person who had never been a resident of Ohio and who was present in Ohio on the date the cause of action accrued for business purposes (he drove a delivery truck), was unconstitutional and violative of the Commerce Clause as it created an impermissible burden on interstate commerce. If *R.C. 2305.15(A)* were applied to toll the two-year statute of limitations, the driver would perpetually be subject to potential liability for damages arising out of the

accident as he was, by the very nature of being a Kentucky resident, "out of the state." *Ward v. Graue, 2013-Ohio-1107, 987 N.E.2d 760, 2013 Ohio App. LEXIS 1001 (Ohio Ct. App., Clermont County 2013)*.

Raising the statute of limitations in an answer is sufficient to argue at the summary judgment stage of the proceedings that the statute of limitations was violated as a result of a savings statute violation. Therefore, summary judgment was properly granted to a truck owner in a negligence case where an injured party and his wife timely filed their complaint under *R.C. 2305.10(A)*, dismissed the action, and then refiled the complaint outside of the one year period set forth in *R.C. 2305.19(A)*; the failure to specifically raise the savings statute under *R.C. 2305.19(A)* in an answer did not constitute waiver since the answer sets forth the statute of limitations as an affirmative defense under Civ.R. 8(C). *Topazio v. Acme Co., 2010-Ohio-1002, 186 Ohio App. 3d 377, 928 N.E.2d 469, 2010 Ohio App. LEXIS 821 (Ohio Ct. App., Mahoning County 2010)*.

Search and seizure

The statute of limitations for a Bivens action is two years: *Friedman v. Estate of Presser, 929 F.2d 1151, 1991 U.S. App. LEXIS 5951 (6th Cir. Ohio 1991)*.

Bivens claims against federal agents for violation of plaintiffs' *USConst amend IV* rights were governed by *R.C. 2305.11*; the statute began to run, at the latest, on the date that plaintiffs' property was unreasonably seized and retained without due process: (decided under former analogous section) *Shannon v. Recording Industry Ass'n, 661 F. Supp. 205, 1987 U.S. Dist. LEXIS 15079 (S.D. Ohio 1987)*.

Sexual abuse

Trial court properly found that the statute of limitations had expired prior to appellants filing their claims because the discovery rule was not applicable; since appellants filed the action for assault and battery before August 3, 2006, the trial court correctly applied former *R.C. 2305.111* and was required to determine whether the common law discovery rule tolled the one-year statute of limitations. The abuse survivor had sufficient facts to have gone forward to the authorities with the allegations of satanic ritual abuse or to initiate a lawsuit against the identified individuals in order to determine who the unknown participants were. *Doe v. Robinson, 2010-Ohio-5894, 2010 Ohio App. LEXIS 4953 (Ohio Ct. App., Lucas County 2010)*.

In a case alleging child sexual abuse, a trial court erred by granting summary judgment to an estate and an administrator because, even under the one-year limitations period, a victim's claim was tolled where she showed repressed memories. The trial court incorrectly held that an expert's opinion did not state to a reasonable degree of certainty that the victim had repressed memories, it was difficult to ascertain what time period the victim was referring to in her deposition answers, and the presumptions argued regarding the victim's answers to leading questions were in equal balance to the expert's opinion. *Swartz v. Estate of Karder, 2009-Ohio-6790, 2009 Ohio App. LEXIS 5696 (Ohio Ct. App., Stark County 2009)*.

Parishioners' suit alleging that a diocese and a church were negligent in failing to protect them from a priest's sexual abuse was properly found to be time-barred under *R.C. 2305.10* as the suit was not filed within two years after the parishioners reached the age of majority. The parishioners knew at the time of the alleged abuse that they had been abused, knew the identity of the perpetrator, and knew of a relationship between the alleged abuser, the diocese, and the church; thus, this relationship, at the very least, prompted a duty to investigate the possibility that the diocese was negligent. *Doe v. Catholic Diocese of Cleveland, 2006-Ohio-5233, 2006 Ohio App. LEXIS 5232 (Ohio Ct. App., Cuyahoga County 2006)*.

Minor who is the victim of sexual abuse has two years from the date he or she reaches the age of majority to assert any claims against the employer of the perpetrator arising from the sexual abuse when at the time of the abuse, the victim knows the identity of the perpetrator, the employer of the perpetrator, and that a battery has occurred: *Doe v. Archdiocese of Cincinnati, 2006-Ohio-2625, 109 Ohio St. 3d 491, 849 N.E.2d 268, 2006 Ohio LEXIS 1565 (Ohio 2006)*.

The limitations period against the archdiocese for alleged sexual abuse was not tolled where the plaintiffs had knowledge of the circumstances of the abuse and had at least a duty to investigate the possibility that the archdiocese was negligent or otherwise culpable: *Cramer v. Archdiocese of Cincinnati, 2004-Ohio-3891, 158 Ohio App. 3d 110, 814 N.E.2d 97, 2004 Ohio App. LEXIS 3515 (Ohio Ct. App., Hamilton County 2004)*.

Pursuant to Civ.R. 56(C), a school district was entitled to summary judgment where three students alleged that the district had failed to protect them from a teacher who engaged in sexual relations with them because their claims came outside the applicable statute of limitations, *R.C. 2305.10*. *A.S. v. Fairfield Sch. Dist., 2003-Ohio-6260, 2003 Ohio App. LEXIS 5600 (Ohio Ct. App., Butler County 2003)*.

The statute of limitations as to child sexual abuse was not tolled where the alleged victims suppressed their memories to avoid confronting them. Repression signifies the involuntary and complete loss of memory: *Livingston v. Diocese of Cleveland, 126 Ohio App. 3d 299, 710 N.E.2d 330, 1998 Ohio App. LEXIS 384 (Ohio Ct. App., Cuyahoga County 1998)*.

The harm to plaintiff as a result of defendants' negligent supervision occurred when the tortfeasor sexually assaulted plaintiff; thus, it was the sexual abuse which triggered plaintiff's cause of action in negligent supervision, not her realization that the tortfeasor's drug activities were illegal: *Primmer v. Vrable, 1996 Ohio App. LEXIS 1049 (Ohio Ct. App., Franklin County Mar. 19, 1996)*.

The decision in *Ault v. Jasko (1994), 70 OS3d 114*, applying the one-year limit to actions for repressed sexual abuse, applies retroactively: *O'Connor v. Zimmer, 104 Ohio App. 3d 143, 661 N.E.2d 248, 1995 Ohio App. LEXIS 2093 (Ohio Ct. App., Cuyahoga County 1995)*.

A cause of action premised upon acts of sexual abuse is subject to the one-year statute of limitations for assault and battery: *Doe v. First United Methodist Church, 1994-Ohio-531, 68 Ohio St. 3d 531, 629 N.E.2d 402, 1994 Ohio LEXIS 636 (Ohio 1994)*.

—Repressed memories

Summary judgment was properly granted because the alleged victims did not repress the memory of the sexual abuse by a priest so as to toll the statute of limitations under *R.C. 2305.111* and *R.C. 2305.10*; rather, all of the victims were aware of the harmfulness or inappropriateness of the priest's acts during their childhood and suffered from that awareness. Because each cause of action alleged by the victims accrued no later 1983, which was two years after most of the victims reached the age of majority, and because they did not file the action until 2002, the limitations period for each of the victims' claims had run and thus, the claims were barred. *Klimko v. Cleveland Catholic Diocese, 2007-Ohio-6656, 2007 Ohio App. LEXIS 5835 (Ohio Ct. App., Cuyahoga County 2007)*.

Statute of limitations

Because the inmate's complaint regarding the correctional facility's refusal to provide him with additional toilet paper was filed on December 17, 2014 and the statute of limitations for a negligence action was two years, the trial court erred by finding that the claim was barred by the statute of limitations. *Gambino v. Pugh, 2016-Ohio-7217, 2016 Ohio App. LEXIS 4070 (Ohio Ct. App., Mahoning County 2016)*.

In a case arising from a motor vehicle accident, the trial court did not err by dismissing the action as to a charity because the claims against the charity were time-barred. It was clear from the face of the complaint that the claim for personal injury was barred as the claim against the charity was not filed until more than nine years after the accident, and the complaint did not set forth any allegation that would indicate the time limit was tolled for any reason. *Jones v. Upton, 2015-Ohio-1044, 2015 Ohio App. LEXIS 1045 (Ohio Ct. App., Montgomery County 2015)*.

Complainant's allegation that an alleged offender sexually assaulted her on three occasions when she was a child was time-barred because *R.C. 2305.111(C)* applied retroactively, accrued upon the date on which the complainant reached the age of majority, and did not contain a tolling provision for repressed memories of childhood sexual abuse. The discovery rule did not apply to toll the statute of limitations while a victim of childhood sexual abuse repressed memories of that abuse. *Pratte v. Stewart, 2010-Ohio-1860, 125 Ohio St. 3d 473, 929 N.E.2d 415, 2010 Ohio LEXIS 1044 (Ohio 2010)*.

Summary judgment

Trial court's grant of summary judgment to a motorist in a truck driver's negligence action, arising from a vehicle collision between them, was proper, as the action was brought beyond the two-year limitation period of *R.C. 2305.10(A)* and the unsoundness-of-mind claim that the driver asserted to toll that period did not meet the requirements of the second paragraph of *R.C. 2305.16*; further, there was insufficient evidence to find that the unsoundness occurred simultaneously with the accident for purposes of evaluating the claim under the first

paragraph of *§ 2305.16*. *Thomas-Davidson v. Hughes, 2007-Ohio-2444, 2007 Ohio App. LEXIS 2260 (Ohio Ct. App., Butler County 2007)*.

When an alleged injured party claimed that a motorist's car struck the alleged injured party, and the motorist said the alleged injured party's suit was barred by the statute of limitations in *R.C. 2305.10(A)*, the alleged injured party could not avoid an adverse summary judgment by filing an affidavit stating that the incident might have occurred on a date within the limitations period because the alleged injured party submitted no evidentiary materials corroborating that the incident actually did occur within that period. *Combs v. Spence, 2007-Ohio-2210, 2007 Ohio App. LEXIS 2067 (Ohio Ct. App., Licking County 2007)*.

Trial court's grant of summary judgment to a motorist in a truck driver's negligence action, arising from a vehicle collision between them, was proper, as the action was brought beyond the two-year limitation period of *R.C. 2305.10(A)* and the unsoundness-of-mind claim that the driver asserted to toll that period did not meet the requirements of the second paragraph of *R.C. 2305.16*. There was insufficient evidence to find that the unsoundness occurred simultaneously with the accident for purposes of evaluating the claim under the first paragraph of *§ 2305.16*. *Thomas-Davidson v. Hughes, 2007-Ohio-2444, 2007 Ohio App. LEXIS 2260 (Ohio Ct. App., Butler County 2007)*.

Trial court properly granted summary judgment to a motorist in a truck driver's negligence action, arising from a vehicle collision that occurred, as the limitations period had run and there was no genuine issue of fact regarding whether the tolling provision of *R.C. 2305.15* was sufficient to make the action timely. Even if the motorist's part-day trips outside the state were counted as full days for purposes of *§ 2305.15*, together with vacation times and other periods when the motorist was out of the state during the two-year limitations period of *R.C. 2305.10(A)*, there were still not 21 days of the motorist's absence from the state. *Thomas-Davidson v. Hughes, 2007-Ohio-2444, 2007 Ohio App. LEXIS 2260 (Ohio Ct. App., Butler County 2007)*.

Summary judgment was properly granted for taxi companies in a negligence action by a pedestrian, arising from a pedestrian-vehicle accident, as the two-year limitations period of *R.C. 2305.10* barred the claim and the savings statute, *R.C. 2305.19*, was inapplicable. The pedestrian's first action was voluntarily dismissed pursuant to Civ.R. 41, which was "otherwise than on the merits," but as the pedestrian had not attempted to demanded service of that complaint, the action was not commenced pursuant to Civ.R. 3 and accordingly, the savings statute did not provide the pedestrian with additional time beyond the limitations period. *Stringer v. Whaley, 2007-Ohio-1484, 2007 Ohio App. LEXIS 1354 (Ohio Ct. App., Hamilton County 2007)*.

Trial court's grant of summary judgment to a deputy sheriff who was admittedly not served in an action by an arrestee, wherein she alleged that she was mistreated when she was arrested and she asserted claims of civil assault and battery, intentional infliction of emotional distress, and federal civil rights violations, was proper, as the limitations periods pertaining to those claims had passed pursuant to *R.C. 2305.10(A)* and *2305.09(D)*. *Batchelder v. Young, 2006-Ohio-6097, 2006 Ohio App. LEXIS 6057 (Ohio Ct. App., Trumbull County 2006)*.

Summary judgment was entered for defendants, who were sued by a disabled teacher in two consolidated actions; the teacher's negligent infliction of emotional distress claim was time-barred under the two year statute of limitations set out in *R.C. 2305.10* because the acts the formed the basis of his claims occurred in June 1996 and the teacher had waited until May 2003 to file the consolidated suits. *Brown v. Nationwide Mut. Ins. Co., 2005 U.S. Dist. LEXIS 9708 (N.D. Ohio May 23, 2005)*.

Question of motor vehicle accident victim's unsoundness of mind at time cause of action accrued, for purposes of determining whether limitations period was tolled, was for jury and was not appropriate for summary judgment: *Almanza v. Kohlhorst, 85 Ohio App. 3d 135, 619 N.E.2d 442, 1992 Ohio App. LEXIS 6601 (Ohio Ct. App., Henry County 1992)*.

When suit was filed just over two months after the diagnosis of injuries, even though plaintiff first noticed his symptoms eight years earlier, the court must deny a motion for summary judgment because it must view all evidence in the light most favorable to the party opposing summary judgment: *Moldovan v. Lear Siegler, Inc., 672 F. Supp. 1023, 1987 U.S. Dist. LEXIS 10063 (N.D. Ohio 1987)*.

Summary judgment is inappropriate where plaintiffs neither knew nor could have known that they had been injured by a defect in defendant's product prior to two years before filing action; their nonspecific ailments more than two years before filing action, for which medical personnel could opine no cause, could not be used as the date of discovery of "injury": *Harper v. Eli Lilly & Co., 575 F. Supp. 1359, 1983 U.S. Dist. LEXIS 11704 (N.D. Ohio 1983)*.

Surveyor negligence

Claims of surveyor negligence are governed by the four-year statute of limitations for general negligence claims found in *R.C. 2305.09(D)*, not by the two-year period for bodily injury or injury to personal property set forth in *R.C. 2305.10*, or by the one-year limitations period for professional malpractice claims in *R.C. 2305.11(A)*: *Bell v. Holden Survey, Inc., 2000-Ohio-2576, 2000 Ohio App. LEXIS 4586 (Ohio Ct. App., Carroll County 2000)*.

Survival action

A survival action under *R.C. 2305.21*, which is essentially an action for personal injury, is governed by the statute of limitations set forth in *R.C. 2305.10*, and not by *R.C. 2305.09(D)*: *Ball v. Victor K. Browning & Co., 21 Ohio App. 3d 175, 487 N.E.2d 326, 1984 Ohio App. LEXIS 12674 (Ohio Ct. App., Ashtabula County 1984)*.

Takings action

Property owners' *U.S. Const. amend. V* takings claim against a city was properly dismissed as barred by the applicable two year statute of limitations under *R.C. 2305.10*; the owners did file their federal action against the city

until several years after the statute of limitations had run, and the owners did not suffer from a continuous violation because, once the city dug the trench to extend a sewer pipeline and pumped groundwater out from the owners' property, the owners' well ran dry and the damage was done. *Hensley v. City of Columbus, 557 F.3d 693, 2009 FED App. 0064P, 2009 U.S. App. LEXIS 3442 (6th Cir. Ohio 2009)*.

Time limitations

In appellant's personal injury suit, the trial court erred in granting appellees' motion for judgment on the pleadings because the complaint should have been deemed filed on the day prior to the time-stamp; and thus, within the statute of limitations. The evidence showed that appellant completed all of the tasks necessary in order for the complaint to be accepted by the clerk's office through an E-filing on the day the two-year statute of limitations expired under under *R.C. 2305.10*, and the complaint was eventually processed the following day through no further action by counsel. *Covarrubias v. Lowe's Home Improvement, L.L.C., 2021-Ohio-1658, 172 N.E.3d 516, 2021 Ohio App. LEXIS 1622 (Ohio Ct. App., Cuyahoga County 2021)*.

Couple filed a personal injury complaint against the driver on May 8, 2020, alleging that they suffered injuries and damages as a result of a March 11, 2016, motor vehicle accident, and their complaint did not indicate that it was a re-filed action, nor did it assert that an exception to the statute of limitations applied, thus, the face of the complaint indicated that the couple's action was barred by the two-year statute of limitations, and it was the couple's duty to plead that an exception to the statute of limitations applied. *Omobien v. Flinn, 2021-Ohio-2096, 2021 Ohio App. LEXIS 2049 (Ohio Ct. App., Summit County 2021)*.

None of appellant's arguments overcame her failure to commerce her third-party claim against the third-party defendant prior to the expiration of the two-year statute of limitations; the motor vehicle accident at issue occurred on August 4, 2016, appellant admitted that was the date when the cause of action accrued, and the third-party complaint was filed on December 6, 2018, which was more than two years from when the cause of action accrued. *Adamson v. Buckenmeyer, 2020-Ohio-4241, 2020 Ohio App. LEXIS 3137 (Ohio Ct. App., Lucas County 2020)*.

Trial court properly granted judgment on the pleadings to state police officers, a medical center, and associated individuals in an action by a motorist, arising from his claim that he was subjected to an unconstitutional cavity search at the police station and at the medical center, as his claims were time-barred because they were brought outside of the one- and two-year applicable limitations periods. *Mitchell v. Holzer Med. Ctr., 2017-Ohio-8244, 2017 Ohio App. LEXIS 4617 (Ohio Ct. App., Gallia County 2017)*.

Because the time-extension provisions of Civ.R. 6(B)(2) did not apply to acts to be done pursuant to statutory provisions, appellant could not show excusable neglect under that rule, and her tort claims were properly dismissed as time-barred under *R.C. 2305.10*. *Emery v. State Farm Ins., 2015-Ohio-4056, 2015 Ohio App. LEXIS 3908 (Ohio Ct. App., Sandusky County 2015)*.

Trial court properly dismissed the complaint because it was time barred; pursuant to *R.C. 2305.111* (2006), the action brought by the alleged victim of childhood sexual abuse, who asserted a claim resulting from childhood sexual abuse, failed to bring the action within 12 years after the cause of action accrued. The legislature, by enacting *R.C. 2305.10(G)*, stated that the 12-year limitation period applied regardless of the previous rule of law established in Ault. *Pratte v. Stewart, 2009-Ohio-1768, 2009 Ohio App. LEXIS 1497 (Ohio Ct. App., Greene County 2009)*, aff'd, *2010-Ohio-1860, 125 Ohio St. 3d 473, 929 N.E.2d 415, 2010 Ohio LEXIS 1044 (Ohio 2010)*.

Negligence claim was properly dismissed for failure to state a claim. The victim failed to commence her action against the driver within the applicable statute of limitations because, although *R.C. 2305.19(A)* gave the victim until May 22, 2008 to serve the newly identified driver, she failed to do so and thus, the victim could not avail herself of the saving statute. *Lewis v. Hayes, 2009-Ohio-640, 2009 Ohio App. LEXIS 524 (Ohio Ct. App., Franklin County 2009)*.

Trial court did not err in granting a landlord's motion for summary judgment on a tenant's claim for monetary damages due to the destruction of the tenant's personal property because the claim was barred by the two-year statute of limitations in *R.C. 2305.10(A)* where the claim was grounded in tort, and the six-year statute of limitations in *R.C. 2305.07* for "liability created by statute"—meaning liability that would not exist but for a statute—did not apply to claims arising from *R.C. 5321.04*. *Shorter v. Neapolitan, 2008-Ohio-6597, 179 Ohio App. 3d 608, 902 N.E.2d 1061, 2008 Ohio App. LEXIS 5498 (Ohio Ct. App., Mahoning County 2008)*.

Where a motorist filed a personal injury complaint against a driver, arising out of a motor vehicle accident, and the motorist claimed that the limitations period under *R.C. 2305.10* was tolled for three days while the driver was out of state, such tolled the limitations period for purposes of a timely filing of the complaint, as the driver did not support the statement in opposition that two of the three days were only partial with sufficient evidence under Civ.R. 56(C). *Lisi v. Henkel, 2008-Ohio-816, 175 Ohio App. 3d 463, 887 N.E.2d 1209, 2008 Ohio App. LEXIS 706 (Ohio Ct. App., Lucas County 2008)*.

Home owner's negligence action against a kitchen countertop supplier and installer, alleging that the countertop was cracked and crazed, was time-barred where it was not brought within the limitations periods under *R.C. 2305.09* and *2305.10*; the action accrued when the injury to the countertop was first discovered. *Harris v. Formica Corp., 2008-Ohio-694, 175 Ohio App. 3d 210, 886 N.E.2d 249, 2008 Ohio App. LEXIS 590 (Ohio Ct. App., Cuyahoga County 2008)*.

Alleged injured party's complaint was untimely re-filed, after its voluntary dismissal, because (1) the applicable statute of limitations, *R.C. 2305.10*, had expired by the time the complaint was re-filed, so the alleged injured party had to rely on the savings statute, *R.C. 2305.19(A)*, to show the re-filing was timely, (2) the savings statute required that the complaint be re-filed within one year after it was voluntarily dismissed, (3) the complaint was re-filed one year and six days after its voluntary dismissal, and (4) the tolling provisions of *R.C. 2305.15(A)* did not apply to the savings statute's one year limitations period because *§ 2305.15(A)* only applied to the limitations

periods specified in *§ 2305.15(A)*, which did not include the savings statute. *Goodwin v. T. J. Schimmoeller Trucking, 2008-Ohio-163, 2008 Ohio App. LEXIS 136 (Ohio Ct. App., Wyandot County 2008)*.

Trial court erred in dismissing a complaint filed by a former Catholic school student who was allegedly the victim of clerical ritualistic and sexual abuse upon a finding that the claims were barred by the applicable limitation periods for sexual battery and bodily injury caused by negligence under former *R.C. 2305.111* and *2305.10*, as the limitations periods were tolled while she was a minor pursuant to *R.C. 2305.16*, and under the discovery rule and equitable estoppel, the student alleged that she was unable to bring the claims at an earlier time; she was unaware of the identity of the perpetrators until she recognized them during a newscast, they successfully controlled and threatened her during the abusive years, the abuse psychologically impaired her, and she never considered that the perpetrators could have been priests due to their conduct and indoctrination of her. *Doe v. Robinson, 2007-Ohio-5746, 2007 Ohio App. LEXIS 5048 (Ohio Ct. App., Lucas County 2007)*.

District court correctly found that a winery's negligence action against the consultants to the glassmaker which manufactured the winery's bottles was barred by the applicable two-year statute of limitations under *R.C. 2305.10(A)*. By 1998, or, at the latest, 1999, the winery's majority shareholder had enough information about the consultant's role in a defective bottle problem that any cause of action against the consultants had accrued, the two-year statute of limitations period had begun to run, and, at the latest, it expired in 2001; because the winery's agreement to toll the limitations period in 2004 fell outside the two-year period, the negligence claim was time-barred. *Twee Jonge Gezellen, Ltd. v. Owens-Illinois, Inc., 238 Fed. Appx. 159, 2007 FED App. 0531N, 2007 U.S. App. LEXIS 18257 (6th Cir. Ohio 2007)*.

Trial court properly granted summary judgment to a motorist in a truck driver's negligence action, arising from a vehicle collision that occurred, as the limitations period had run and there was no genuine issue of fact regarding whether the tolling provision of *R.C. 2305.15* was sufficient to make the action timely; even if the motorist's part-day trips outside the state were counted as full days for purposes of *§ 2305.15*, together with vacation times and other periods when the motorist was out of the state during the two-year limitations period of *R.C. 2305.10(A)*, there were still not 21 days of the motorist's absence from the state. *Thomas-Davidson v. Hughes, 2007-Ohio-2444, 2007 Ohio App. LEXIS 2260 (Ohio Ct. App., Butler County 2007)*.

Summary judgment was properly granted for taxi companies in a negligence action by a pedestrian, arising from a pedestrian-vehicle accident, as the two-year limitations period of *R.C. 2305.10* barred the claim and the savings statute, *R.C. 2305.19*, was inapplicable; the pedestrian's first action was voluntarily dismissed pursuant to Civ.R. 41, which was "otherwise than on the merits," but as the pedestrian had not attempted to demanded service of that complaint, the action was not commenced pursuant to Civ.R. 3 and accordingly, the savings statute did not provide the pedestrian with additional time beyond the limitations period. *Stringer v. Whaley, 2007-Ohio-1484, 2007 Ohio App. LEXIS 1354 (Ohio Ct. App., Hamilton County 2007)*.

When an alleged injured party sued a motorist for negligence causing the party's personal injuries, the alleged injured party did not meet his burden of showing that the applicable statute of limitations in *R.C. 2305.10(A)* was

tolled, pursuant to *R.C. 2305.15(A)*, for a sufficient number of days to cause the alleged injured party's complaint to have been timely filed, because, when determining how many days the motorist was absent from the state during the limitations period, causing the limitations period to be tolled, only whole days when the motorist was absent were counted. *Barker v. Strunk, 2007-Ohio-884, 2007 Ohio App. LEXIS 818 (Ohio Ct. App., Lorain County 2007)*.

Trial court erred in denying a landlord's motion for summary judgment in a tenant's refiled personal injury action, arising from her fall on unlit stairs, as the tenant had filed a notice of dismissal of her original action and pursuant to Civ.R. 41(A)(1), that dismissal became effective on the date that it was filed rather than on the date that the trial court entered judgment thereon; as the refiled action was not filed within one year pursuant to *R.C. 2305.19(A)* and the applicable limitations period under *R.C. 2305.10* had expired, the action was time-barred. *Hawkins v. Innovative Prop. Mgmt., 2006-Ohio-6153, 2006 Ohio App. LEXIS 6123 (Ohio Ct. App., Summit County 2006)*.

Summary judgment was properly granted to an audiologist and his employer dismissing a patient's personal injury suit against them, alleging negligence in the care provided to the patient, because the patient's injury occurred on the date that he saw the audiologist for a hearing aid evaluation, and his suit was not filed within two years of that date. The court declined to apply the discovery rule to the patient's claim because the discovery rule is given narrow application and is applied in only limited situations, and there was no case law supporting the application of the rule to the patient's claim. *Hartman v. Schachner, 2005-Ohio-7000, 2005 Ohio App. LEXIS 6293 (Ohio Ct. App., Lucas County 2005)*.

Tolling

In a car accident case, the trial court erred in dismissing appellant's negligence claim as barred on statute of limitations grounds because appellee, an out-of-state resident at the time of the accident, did not engage in activities related to interstate commerce as she was absent from the state for non-business reasons; and the application of this statute did not subject appellee to perpetual liability as she returned to Ohio within months following the accident; thus, the statute of limitations was tolled during appellee's absence from Ohio. Further, the trial court erred in granting summary judgment in favor of appellee based on its determinations that this statute was unconstitutional as applied to her. *Roy v. Grove, 2021-Ohio-2689, 2021 Ohio App. LEXIS 2649 (Ohio Ct. App., Franklin County 2021)*.

IRS agents were properly granted summary judgment on plaintiffs' Bivens claims because claims were time barred under applicable two-year statute of limitations as they were filed more than two years after allegedly unlawful search, and plaintiffs were not entitled to equitable tolling because they failed to diligently pursue their rights. *Zappone v. United States, 870 F.3d 551, 2017 FED App. 0209P, 2017 U.S. App. LEXIS 17255 (6th Cir. Ohio 2017)*, cert. denied, *138 S. Ct. 1303, 200 L. Ed. 2d 474, 2018 U.S. LEXIS 1905 (U.S. 2018)*.

Trial court erred by dismissing the claim against the driver because both the original and amended complaints were filed within the applicable statute of limitations as applied to him. The car accident victim filed his amended

complaint, naming the driver, within the statute of limitations as to the driver, due to tolling while the driver was out of state, which was his right and once he obtained service on the driver, his lawsuit was properly commenced. *Schisler v. Columbus Med. Equip., 2016-Ohio-3302, 2016 Ohio App. LEXIS 2161 (Ohio Ct. App., Franklin County 2016)*.

Trial court erred in dismissing appellant's negligent supervision claim, where the complaint asserted that appellant did not discover the fraud until he found the IRS lien in 2009, less than two years before the complaint was filed. *Lisboa v. Tramer, 2012-Ohio-1549, 2012 Ohio App. LEXIS 1360 (Ohio Ct. App., Cuyahoga County 2012)*.

Employee's claims for negligent infliction of emotional distress and negligence were properly dismissed as those two claims were not filed within the two-year statute of limitations in *R.C. 2305.10*. The tolling provisions of *R.C. 2305.16* did not operate to toll the claims as the employee's post-traumatic stress disorder did not rise to the level of mental retardation or derangement required by *R.C. 1.02(C)*. *Thomas v. Progressive Cas. Ins. Co., 2011-Ohio-6712, 969 N.E.2d 1284, 2011 Ohio App. LEXIS 5531 (Ohio Ct. App., Montgomery County 2011)*.

Summary judgment in favor of the vehicle owner and driver was proper, because the owner and driver were not served until over one year after the complaint was filed, and the tolling provisions of *R.C. 2305.15* could not be used to extend the one-year time limitation within which to commence an action under Civ.R. 3(A). *Garrett v. Gill, 2011-Ohio-3449, 2011 Ohio App. LEXIS 2925 (Ohio Ct. App., Hamilton County 2011)*.

Trial court did not err by concluding that accident victims' complaint against a motorist was barred by the two-year statute of limitations applicable to actions for bodily injury in *R.C. 2305.10* because the victims, who stated that they believed that the motorist had been out of the State of Ohio for more than ten days during the two-year period, did not allege any facts in their complaint that would have rendered *R.C. 2305.15(A)* applicable. *Kelley v. Stauffer, 2010-Ohio-4522, 2010 Ohio App. LEXIS 3816 (Ohio Ct. App., Franklin County 2010)*.

Personal injury case should not have been dismissed based on a late filing under *R.C. 2305.10(A)* because the tolling provision in *R.C. 2305.15(B)* applied to a passenger's incarceration, even though he was not imprisoned at the time of service. At least two days of the imprisonment counted as tolling days because there was an interference with the ability to complete service and filing; as to a third day, there were no fraction of days since each calendar day counted for itself. *Young v. Duvall, 2009-Ohio-5806, 2009 Ohio App. LEXIS 4878 (Ohio Ct. App., Morrow County 2009)*.

Employee's personal injury claim was dismissed as it was not filed within the two-year statute of limitations in *R.C. 2305.10*. The deadline for filing the complaint was not tolled by Servicemembers Civil Relief Act as the employee's 14 days of annual National Guard training did not qualify as "active duty" under 50 U.S.C.S. app. § 526 so as to toll the statute of limitations under the Servicemembers Civil Relief Act. *Gutridge v. Suburban Steel Supply Co., 2008-Ohio-3902, 2008 Ohio App. LEXIS 3304 (Ohio Ct. App., Licking County 2008)*.

Toxic exposure

Worker's own admission indicated she knew of her exposure to Toluene Di-Isocyanate and the sources of this exposure more than two years before filing of suit in violation of statute of limitations: *Pollitt v. General Motors Corp., 894 F.2d 858, 1990 U.S. App. LEXIS 1095 (6th Cir. Ohio 1990)*.

Trademark infringement

In plaintiff retailer's trademark infringement action against defendant store as to selling improperly imported gray goods, where the store argued the claims were barred by laches, the period of delay was considered in connection with the statute of limitations under *R.C. 2305.10* of two years, and although the store argued it had been selling the retailer's clothes for years, the retailer stated it only learned in 2004 of those sales and thus, laches did not bar the claims. *Abercrombie & Fitch v. Fashion Shops of Kentucky, Inc., 363 F. Supp. 2d 952, 2005 U.S. Dist. LEXIS 9846 (S.D. Ohio 2005)*.

Doctrine of progressive encroachment applied to plaintiff's Lanham Act trademark infringement claim despite warning letter written more than two years prior to claim where no infringement was claimed in letter; plaintiff's claim did not accrue until defendant attempted to register its mark: *SCI Systems, Inc. v. Solidstate Controls, Inc., 748 F. Supp. 1257, 1990 U.S. Dist. LEXIS 14615 (S.D. Ohio 1990)*.

Uniform Commercial Code

The four-year statute of limitations of *R.C. 1302.98(A)* governs claims for bodily injury or property damage arising from a sales contract when the transaction primarily concerns the sale of goods rather than the provision of services: *Prokasy v. Pearle Vision Center, 27 Ohio App. 3d 44, 499 N.E.2d 387, 1985 Ohio App. LEXIS 10282 (Ohio Ct. App., Cuyahoga County 1985)*.

Where a cause of action arose because of damage to property, the applicable statute of limitations is *R.C. 2305.10*; the existence of contractual privity between the parties does not mandate the application of the four-year limitations period of the UCC: *AMF, Inc. v. Computer Automation, Inc., 573 F. Supp. 924, 1983 U.S. Dist. LEXIS 12850 (S.D. Ohio 1983)*.

Unknown defendant

When a worker sued, inter alia, a power company, as well as a John Doe defendant, and subsequently learned the worker had sued the wrong power company, after which the worker was allowed, under Civ.R. 15(D), to file a first amended complaint naming the correct power company, service of that first amended complaint by certified mail on the correct company's agent did not satisfy Civ.R. 3(A) so as to avoid a statute of limitations bar in *R.C. 2305.10* as to that complaint because Civ.R. 15(D) required that the first amended complaint be personally served on the correct power company, but it was error to grant summary judgment in favor of the company on that basis because,

inter alia, when the summary judgment motion was filed, the first amended complaint had been superseded by a second amended complaint which did not rely on Rule 15(D). *Knotts v. Solid Rock Enters., 2007-Ohio-1059, 2007 Ohio App. LEXIS 6350 (Ohio Ct. App., Montgomery County 2007)*.

When alleged injured parties suing a manufacturer identified the manufacturer as "John Doe" in their original complaint, their claims against this party were barred by the statute of limitations, in *R.C. 2305.10(A)*, because, when they were able to identify the manufacturer and moved to amend their complaint to name it, they had not strictly complied with Civ.R. 15(D), requiring that they allege they were unable to identify the manufacturer, as no such allegation appeared in their original complaint or in the amended complaint actually filed, although it did appear in the amended complaint attached to the motion to amend, so their claims against the manufacturer in their amended complaint did not relate back, under Civ.R. 15(C), to the original complaint's filing, which occurred on the day the statute of limitations expired. *Lawson v. Holmes, 2006-Ohio-2511, 166 Ohio App. 3d 857, 853 N.E.2d 712, 2006 Ohio App. LEXIS 2376 (Ohio Ct. App., Brown County 2006)*.

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The discovery rule does not apply to the period necessary to discover a potential defendant's identity: *Hervey v. Normandy Dev. Co., 66 Ohio App. 3d 496, 585 N.E.2d 570, 1990 Ohio App. LEXIS 939 (Ohio Ct. App., Ashtabula County 1990)*.

An action is not begun within the provisions of statutes of limitation against defendant whose name is unknown, unless his identity is set forth in the complaint. If the defendant is not identified, the action is not begun against anyone: *36 Ohio App. 2d 139, 65 Ohio Op. 2d 159, 303 N.E.2d 892*.

Veterinarian, action against

An action against a veterinarian for negligence in the treatment of a horse is not an action for malpractice, and is not subject to the one-year statute of limitations of *R.C. 2305.11*: *Southall v. Gabel, 28 Ohio App. 2d 295, 57 Ohio Op. 2d 451, 277 N.E.2d 230, 1971 Ohio App. LEXIS 438 (Ohio Ct. App., Franklin County 1971)*.

Waiver

Where there are no allegations in the petition or statements in the opening statement of injury to personal property the statute of limitations is a matter of affirmative defense, and the court was in error in determining from such petition and opening statement that the two-year statute of limitations is applicable to the cause: *Schiffman v. ITTS, 183 N.E.2d 423, 88 Ohio Law Abs. 389, 1961 Ohio App. LEXIS 788 (Ohio Ct. App., Mahoning County 1961)*.

Workers' compensation claim

In the insurance context, subrogation is derivative in nature, and no new cause of action is created. *R.C. 4123.931*, however, provides for an independent subrogation claim that is in fact a new cause of action. Thus the employer's claim was governed by the six-year limitation in *R.C. 2305.07*, rather than the two-year limitation in *R.C. 2305.10*: *Corn v. Whitmere, 2009-Ohio-2737, 183 Ohio App. 3d 204, 916 N.E.2d 838, 2009 Ohio App. LEXIS 2314 (Ohio Ct. App., Greene County 2009)*.

R.C. 2305.09(D) is the appropriate statute of limitations for an action by an employer to recover the increased premiums and other expenses generated by a workers' compensation claim resulting from an injury inflicted by a third party: *Fountain City Leasing, Inc. v. Key Transport, Inc., 65 Ohio App. 3d 100, 582 N.E.2d 1063, 1989 Ohio App. LEXIS 3974 (Ohio Ct. App., Shelby County 1989)*.

R.C. 2305.10 does not apply to an action against a self-insuring employer for failure to process a workers' compensation claim, since this is not the type of "injury" contemplated by the statute: *Vandemark v. Southland Corp., 38 Ohio St. 3d 1, 525 N.E.2d 1374, 1988 Ohio LEXIS 216 (Ohio 1988)*.

Wrongful death

R.C. 2305.10 deals only with "an action for bodily injury or injuring personal property." An action or claim for wrongful death is not such an action: *Collins v. Yanity, 14 Ohio St. 2d 202, 207,, 43 Ohio Op. 2d 301, 237 N.E.2d 611 (1968)*.

The running of the statute against a claim for bodily injuries during the life of the injured person is not a bar to a claim for wrongful death due to the same injuries: *De Hart v. Ohio Fuel Gas Co., 84 Ohio App. 62, 39 Ohio Op. 101, 85 N.E.2d 586, 1948 Ohio App. LEXIS 723 (Ohio Ct. App., Huron County 1948)*.

Notes to Unpublished Decisions

Accrual of action

Applicability

Civil rights, federal law

Due process

Estoppel

Savings statute

Statute of limitations

Accrual of action

Unpublished decision: Plaintiff's product liability action was timely under *R.C. 2305.10(A)* because up until her surgery for a bowel obstruction, plaintiff was unaware that absorbable sutures used in her hysterectomy three years ago were defective and her prior bladder problems were not the normal problems associated with her hysterectomy. *Dunn v. Ethicon, Inc., 167 Fed. Appx. 539, 2006 FED App. 0126N, 2006 U.S. App. LEXIS 3825 (6th Cir. Ohio 2006)*.

Applicability

Unpublished decision: Plaintiff's claim of bodily injury in connection with hair grafts was untimely under the statute of limitations for medical malpractice claims, *R.C. 2305.113(A)*; the limitations period for bodily injury claims under *R.C. 2305.10(A)* did not apply, as doctors were expressly covered under *R.C. 2305.113(E)(3)*.*St. John v. Bosley, Inc., 481 Fed. Appx. 988, 2012 FED App. 0593N, 2012 U.S. App. LEXIS 11779 (6th Cir. Ohio 2012)*.

Unpublished decision: Beneficiaries' intentional mismanagement tort claim was barred by the two-year statute of limitations, under *R.C. 2305.10*, because the beneficiaries failed to plead the necessary elements of fraud that would have availed them of the four-year statute of limitations because the beneficiaries did not allege that the information in a nurse's report was false, or that the beneficiaries justifiably relied on the report to their detriment. *Shields v. UNUMProvident Corp., 415 Fed. Appx. 686, 2011 FED App. 0160N, 2011 U.S. App. LEXIS 5611 (6th Cir. Ohio 2011)*.

Unpublished decision: Parents were not entitled to relief on their claim under the Individuals with Disabilities Education Act (IDEA), *20 U.S.C.S. § 1401* et seq., where the magistrate correctly applied Ohio's two-year statute of limitations on personal injuries, *R.C. 2305.10(A)*, to the parents' IDEA action and the two-year limitation period allowed the parents ample time in which to assert their child's rights under the IDEA. *Cavanaugh v. Cardinal Local Sch. Dist., 150 Fed. Appx. 386, 2005 FED App. 0728N, 2005 U.S. App. LEXIS 18340 (6th Cir. Ohio 2005)*.

Civil rights, federal law

Unpublished decision: Federal tort claims under the Federal Tort Claims Act (FTCA), *28 U.S.C.S. §§ 1346(b)*, *2671* et seq., by a decedent's sister against the United States that were related to the decedent's death after participation in clinical drug trials failed because the claims were barred by the two-year time limitation under *28 U.S.C.S.*

§ 2401(b), and the sister had not shown entitlement to equitable tolling; civil rights claims against government employees in their individual capacities also failed because the two-year statute of limitations found in *R.C. 2305.10* governed, and the lawsuit was brought more than two years after any claims against the employees could have accrued. *Sykes v. United States, 507 Fed. Appx. 455, 2012 FED App. 1239N, 2012 U.S. App. LEXIS 24759 (6th Cir. Ohio 2012)*.

Unpublished decision: Because plaintiff towing company owner did not bring her Fourth Amendment seizure of property claim within two years of when she learned that the property had been seized, the district court properly granted summary judgment for defendants on statute of limitations grounds. *Rodriguez v. City of Cleveland, 439 Fed. Appx. 433, 2011 FED App. 0625N, 2011 U.S. App. LEXIS 18012 (6th Cir. Ohio 2011)*, cert. denied, *566 U.S. 987, 132 S. Ct. 2380, 182 L. Ed. 2d 1019, 2012 U.S. LEXIS 3687 (U.S. 2012)*.

Due process

Unpublished decision: Former school employee's *42 U.S.C.S. § 1983* procedural due process claim was untimely, as her cause of action accrued when she lost her job based on her designation as a child abuser, not when a hearing officer upheld that designation; her substantive due process claim also was time-barred because it was based on her initial designation as a child abuser. *Printup v. Dir., Ohio Dep't of Job & Family Servs., 654 Fed. Appx. 781, 2016 FED App. 0361N, 2016 U.S. App. LEXIS 12192 (6th Cir. Ohio 2016)*.

Estoppel

Unpublished decision: Consultant to the glassmaker, which manufactured the bottles used by a winery, was not estopped from asserting a statute of limitations defense against the winery's negligence claims because, while the winery showed a misleading factual misrepresentation regarding the consultant's use of Freon 134a, the winery did not show that it actually reasonably relied upon this statement in its decision to delay bringing suit. *Twee Jonge Gezellen, Ltd. v. Owens-Illinois, Inc., 238 Fed. Appx. 159, 2007 FED App. 0531N, 2007 U.S. App. LEXIS 18257 (6th Cir. Ohio 2007)*.

Savings statute

Unpublished decision: Dismissal was improper; the plaintiff's action was saved from being untimely because the plaintiff made adequate overt acts in his attempt to commence his initial action; further, the court employed an erroneous legal standard when it required the plaintiff to have attempted service in his initial action before the expiration of the statute of limitations. *Webster v. Spears, 664 Fed. Appx. 535, 2016 FED App. 0363N, 2016 U.S. App. LEXIS 21524 (6th Cir. Ohio 2016)*.

Statute of limitations

Unpublished decision: Appellant's state-law claims of false imprisonment and false arrest against various city and county officials involved in appellant's arrest and prosecution were untimely because appellant did not file the complaint until over three years after the arrest, and the claims were subject to a one-year statute of limitations under *R.C. 2305.11(A)*; appellant's claim of false imprisonment under *42 U.S.C.S. § 1983* was also untimely because the claim was subject to the statute of limitations that Ohio provided for personal-injury torts, which was two years under *R.C. 2305.10(A)*.*Huffer v. Bogen, 503 Fed. Appx. 455, 2012 FED App. 1128N, 2012 U.S. App. LEXIS 22647 (6th Cir. Ohio 2012)*.

Research References & Practice Aids

Cross-References to Related Sections

Acceleration of bar against claims of potential claimants, *RC § 2117.07*.

Action for wrongful death; persons entitled to recover; limitation of actions, *RC § 2125.02*.

Actions against dalkon shield claimants trust, *RC § 2305.101*.

Commencement of action, *RC § 2305.17*.

Exceptions, *RC § 2305.22*.

Lapse of time a bar, *RC § 2305.03*.

Limitation of four years for certain torts, *RC § 2305.09*.

Presentation and allowance of creditor's claims; pending actions against decedent, *RC § 2117.06*.

Tolling of statute of limitations—

Defendant's imprisonment, *RC § 2305.15*.

Due to minority or unsound mind, *RC § 2305.16*.

Practice Manuals and Treatises

Anderson's Ohio Pretrial Litigation Practice Manual § 1.20 Statute of Limitations

Anderson's Ohio Civil Practice with Forms § 27.06 Defenses

Anderson's Ohio Civil Practice with Forms § 50.06 Statute of Limitations

Anderson's Ohio Civil Practice with Forms § 60.02 Air Pollution

Anderson's Ohio Civil Practice with Forms § 148.28 Two Years

Anderson's *Ohio Consumer Law Manual § 17.25* Statute of Limitations

Page's Ohio Revised Code Annotated

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