

# WEST VIRGINIA

## EQUITABLE TOLLING OF STATUTE OF LIMITATIONS IN WEST VIRGINIA



The West Virginia Supreme Court of Appeals entered two separate memorandum decisions on January 12, 2022 upholding the precedent in West Virginia that there is no equitable tolling of statutes of limitation. The first decision, *Squires v. Sartor* dealt with a personal injury action brought by the Squires. The alleged injury had occurred on April 9, 2018. The Complaint was mailed to the Wood County Circuit Clerk's office on May 18, 2020 and was received and stamped by the Clerk's office on May 19, 2020. Although this would normally mean that the 2-year statute of limitations would have already run, this was when the COVID-19 pandemic was starting to spread through the country and the West Virginia Supreme Court of Appeals had entered an Order extending all statute of limitations running at the time to May 18, 2020.

Defendant moved to dismiss on statute of limitations grounds as the Complaint was not received and stamped until the day after the extended statute of limitations ended. The circuit court granted the motion to dismiss. On appeal, the Squires asserted that the circuit court erred by failing to recognize an exception to the applicable statute of limitations code section in the West Virginia Code: the

"under unique and unprecedented circumstances" exception. The West Virginia Supreme Court of Appeals found this argument unconvincing. Relying on precedent set in their court, they held that they are unwilling to extend the applicable statutory period in order to cure filing defects that could have been avoided had the plaintiff's attorney been more conscientious in adhering to the statutory deadline. Thus, the motion to dismiss was upheld.

The second decision entered on January 12, 2022, dealt with a plaintiff suing the county Board of Education for an employee seeking an inappropriate relationship with her in 2013 and 2014. In West Virginia, claims dealing with minors are generally tolled until they reach the age of majority (18-years-old), plus whatever the normal statute of limitations period is for that claim. On the day that Plaintiff turned 20, her counsel sent notice of the claim to the county Board of Education and filed suit thirty days later. Giving pre-suit notice is a requirement for government agencies. . . however, county boards of education are political subdivisions and not governmental agencies as defined in the West Virginia Code. Thus, there was no pre-suit notice required and the statute of limitations was not tolled for that 30 days before the Complaint was filed. As the West Virginia Code did not contain a tolling provision here, there was nothing to save the claim. The Court once again rejected the equitable tolling argument asserted and upheld the lower court's decision to dismiss the complaint.

These recent decisions affirm that the West Virginia Supreme Court has no intentions on budging from long-standing precedent on equitable tolling of statutes of limitations in West Virginia. If a plaintiff fails to file within the applicable statute of limitations and there is no statutory provision in the West Virginia Code that expressly tolls the type of claim(s) for an additional period, defendants will have an easy motion to dismiss to argue.



**SAMUEL BLOOM**

304.345.4222

[sbloom@baileywyant.com](mailto:sbloom@baileywyant.com)