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# Recent Developments: Greentree v. Fertitta: Three-Year Statute of Limitations Applicable When Tort Claim against Decedent's Estate Is Covered by Liability Insurance

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## *Greentree v. Fertitta:*

## *THREE-YEAR STATUTE OF LIMITATIONS APPLICABLE WHEN TORT CLAIM AGAINST DECEDENT'S ESTATE IS COVERED BY LIABILITY INSURANCE.*

In *Greentree v. Fertitta*, 338 Md. 621, 659 A.2d 1325 (1995), the Court of Appeals of Maryland held that the general three-year statute of limitations applies to a tort claim against a decedent's estate when covered by a liability insurance policy, despite the special time limitations on the administration of estates. In so holding, section 8-104(e) of the Estates and Trusts Article of the Annotated Code of Maryland was construed as creating an exception to the case law developed based upon common law principles. Thus, the court distinguished between cases where the claimant sought recovery from the estate of the decedent and those involving recovery from an insurance company who assumed the risk of insuring the decedent.

On June 29, 1989, Susan Greentree ("Greentree") was involved in an automobile accident with Neal Fertitta ("Fertitta"). Unable to settle with Fertitta's insurance company after almost three years of negotiations, Greentree filed suit in the Circuit Court for Anne Arundel County naming Fertitta as the sole defendant. Subsequently, Greentree learned that Fertitta had died over a year before the suit was filed. Thus, Greentree's attorney opened an estate for Fertitta and served her complaint upon the estate's personal representative.

In the circuit court, the estate filed a motion to dismiss, arguing that the claim was time-barred by section 8-104 of the Estates and Trusts Article. Greentree then amended her complaint, naming Fertitta's estate as defendant. The circuit court granted the estate's motion to dismiss, ruling that Greentree's amendment was not timely filed under section 8-103. Section 8-103(a)(1) provides a six-month statute of limitations for filing claims against an estate following the death of a decedent prior to October 1, 1992. Upon appeal, the Court of Special Appeals of Maryland held that the trial court's application of the statute of limitations was erroneous. However, the court of special appeals affirmed the circuit court's decision, holding that the amendment substituting the estate as defendant did not relate back to the filing of the original complaint. The Court of Appeals of Maryland granted Greentree's petition for certiorari.

To the extent a successful claim would be satisfied by the proceeds of an insurance policy rather than by the assets of an estate, the Court of Appeals of Maryland held that section 8-104(e) made certain procedural requirements inapplicable which would otherwise limit claims against estates. *Greentree*, 338 Md. at 627, 659 A.2d at 1328. The court noted that the short statute of limitations in suits against an estate was designed to promote speed and efficiency in estate administration, while claims against an estate that are covered by insurance are limited to recovery from the insurance company. *Id.* at 629, 659 A.2d at 1329. Therefore, claims against an insurance carrier filed subsequent to the six-month period after the insured's death would not hinder a personal representative's statutory obligation to settle an estate expeditiously. *Id.*

Reasoning that section 8-104(e) was intended to relax the procedural rules that favor prompt resolution in the distribution of estates with regard to claims covered by insurance, the court of appeals determined that section 8-104(e) provided that the three-year statute of limitations applied to Greentree's claim. *Id.* at 630, 659 A.2d at 1329. Furthermore, the court noted that section 8-104(e)(2) limits a claimant's recovery under the section to the amount of the decedent's liability insurance coverage, regardless of the amount of judgment entered against the estate. *Id.* at 628, 659 A.2d at 1329. In addition, the court opined that in the present case, section 8-104(e), made inapplicable the rule of *Burket v. Aldridge*, 241 Md. 423, 216 A.2d 910 (1966), which governs the limitations of claims against estates. *Id.* at 630, 659 A.2d at 1330. The *Burket* principle prevents a late claim against an estate from relating back to a complaint filed against the decedent after the time of death, but within the period of limitations. *Greentree*, 338 Md. at 630, 659 A.2d at 1330 (citing *Burket v. Aldridge*, 241 Md. 423, 216 A.2d 910 (1966)).

The court then noted that applying the three-year statute of limitations to claims covered by insurance where the insured died before the suit is filed fulfilled the contract of insurance between the insurer and the insured. *Id.* at 630, 659 A.2d at 1330. The court also stressed that permitting an insurance company to avoid liability under the policy because of the unforeseen death of its insured allowed the insurer to take advantage of procedural rules governing the administration of estates and would be contrary to Maryland's strong public policy of compensating those injured in motor vehicle accidents. *Id.* at 631, 659 A.2d at 1330.

Finally, the court of appeals observed that the notice requirement of claims covered by insurance generally differs from claims against the assets of an estate. *Id.* While the personal representative of an estate may be unaware of circumstances giving rise to claims against an estate, an insurer typically has notice of a claim long before a suit is filed. *Id.* The court noted that the purpose of a statute of limitations has been "'to promote justice by preventing surprises through the revival of claims that have been allowed to slumber . . . .'" *Id.* (quoting *Order of Railroad Telegraphers v. Railway Express Agency, Inc.*, 321 U.S. 342, 348-49 (1944)). Section 8-104(e) recognizes that notice requirements with respect to uninsured claims against decedents' estates are not applicable where the claim is covered by insurance. *Id.* at 632, 659 A.2d at 1330. Having filed suit within the applicable three-year statute of limitations, the court held that Greentree's action was timely, regardless of special time limitations imposed by the Estates and Trusts Article and the *Burket* principle. *Id.*

A dissent by Judge Karwacki, in which Judge Rodowsky joined, characterized the majority's decision as judicially amending those sections of the Estates and Trusts Article which govern the time limitations for presenting various claims against the estate of a decedent. *Id.* at 632, 659 A.2d at 1330-31 (Karwacki, J., dissenting). In reviewing the *Burket* holding, Judge Karwacki reasoned that under almost identical facts, the court of appeals held that a suit against a dead man was a nullity, and, therefore, there was nothing to which the amendment substituting the estate could relate back. *Id.* at 635, 659 A.2d at 1332. The dissent also questioned the appropriateness of the majority's exception to the statute of limitations which would have the effect of creating such an exception if a decedent was aware, at any time during the limitations period while alive, of a potential claim against him. *Id.* at 636, 659 A.2d at 1332-33. Furthermore, Judge Karwacki reasoned that Greentree's suit was procedurally barred by section 8-101(a) which provides that unless, and until, a personal representative is qualified, there is no party in existence capable of being sued. *Id.* at 637, 659 A.2d at 1333. Therefore, the dissent insisted, the suit was improper since at the time of the commencement, no personal representative had been appointed, and any amendment could not relate back as the original complaint had no legal effect. *Id.* at 639, 659 A.2d at 1334.

In *Greentree v. Fertitta*, the Court of Appeals of Maryland drew a distinction between claims involving the assets of an estate and claims involving the proceeds of a decedent's policy of insurance. This decision recognizes the inequitable result which would occur if insurance companies were allowed to benefit from premiums received from the insured while avoiding their obligations by omitting the fact of the death of the insured prior to the commencement of a suit. While reinforcing the public policy concern of protecting the rights of those injured in automobile accidents to receive compensation, the court's decision simultaneously curtails actions by insurers aimed at eluding liability through the use of procedural loopholes.

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