



Unruh v. Cacchiotti, 257 P.3d 631 (Wash. 2011)

Topics Covered: Professional Liability, Tort Reform

Outcome: Neutral

Issue

The issue in this case was whether the Washington Statute of Repose was constitutional.

AMA Interest

Medical liability reform is the AMA's highest legislative priority.

Case Summary

Dino Cacchiotti, a dentist, treated Lisa Unruh, a minor, for a jaw growth malocclusion. He applied braces to her teeth twice and removed them in two stages. Unfortunately, Ms. Unruh suffered "root resorption" and as a result she lost all of her adult teeth. Consequently, she had to have implants inserted in her jaw.

Eleven years later, after an appointment with another dentist, Ms. Unruh learned that the treatment she had received from Dr. Cacchiotti may have been below the prevailing standard of care. She was told that he should have recommended surgery, instead of braces. Following a written request to Dr. Cacchiotti for mediation, she sued Dr. Cacchiotti and his wife for dental malpractice.

The Cacchiottis moved for summary judgment, asserting that the suit was time barred under the Statute of Repose, RCW § 4.16.350, which states: "Any civil action for damages for injury occurring as a result of health care ... based upon alleged professional negligence shall be commenced within ... one year of the time the patient or his representative discovered or reasonably should have discovered that the injury or condition was caused by said act or omission, ... except that in no event shall an action be commenced more than eight years after said act or omission."

According to the Cacchiottis, the alleged malpractice occurred at the time of the misdiagnosis, which fell outside the time for suit under the Statute of Repose. The trial court agreed and granted the Cacchiottis motion. Ms. Unruh appealed. After the case was fully briefed, it was transferred to the Washington Supreme Court for immediate review, without decision from the Court of Appeals.

The Washington Supreme Court reversed, finding that the Statute of Repose did not bar the plaintiff's suit. The court did not reach the constitutional question.

Litigation Center Involvement

The Litigation Center, the Washington State Medical Association, and Physicians Insurance filed an *amicus curiae* brief to support the statute's constitutionality.

Washington State Supreme Court brief