No. 120745

In the

Supreme Court of Illinois

SHERI LAWLER, Executor of the Estate of JILL PRUSAK, Deceased,

Plaintiff-Appellee,

v.

THE UNIVERSITY OF CHICAGO MEDICAL CENTER, a corporation, THE UNIVERSITY OF CHICAGO HOSPITALS and HEALTH SYSTEM, THE UNIVERSITY OF CHICAGO PHYSICIANS GROUP, THE UNIVERSITY OF CHICAGO HOSPITALS, ADVOCATE CHRIST MEDICAL CENTER, a corporation, UNIVERSITY RETINA & MACULA ASSOCIATES, P.C., and RAMA D. JAGER, M.D.,

Defendants-Appellants.

On Appeal from the Appellate Court of Illinois,
First Judicial District, No. 1-14-3189.
There Heard on Appeal from the Circuit Court of Cook County, Illinois,
County Department, Law Division, No. 11 L 8152.
The Honorable **Daniel T. Gillespie,** Judge Presiding.

REPLY BRIEF OF APPELLANTS

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Argument

Can a timely-filed personal-injury action protect a plaintiff's ability to file a wrongful-death claim until that claim accrues, even if the claim doesn't accrue until after the statute of repose extinguishes it?

The plaintiff insists that this was the General Assembly's intent when it enacted the relation-back statute—not just to preserve claims a plaintiff unknowingly already possesses, but also to prop open the door long enough to let additional claims accrue, even beyond the time when a statute of repose would otherwise extinguish them.

But the plaintiff's foot-in-the-door argument is at odds with this Court's construction of statutes of repose. The notion that a timely complaint bringing certain claims can keep the statute of repose at bay until other, premature claims can accrue is inconsistent with the General Assembly's intent in passing the statute of repose. More importantly, it is not within the power the General Assembly conferred upon the relation-back statute—a power expressly limited to "*preserving* the cause of action," not kindling a cause of action already extinguished before it could accrue.

Criticizing the defendants for suggesting, as she puts it, that the decedent "took too long to die," the plaintiff ignores the significance of when the wrongful-death claims accrued. *See* BR. OF APPELLEE at 38. She disparages their argument as "tough luck," *id.* at 39, indirectly maligning both the General Assembly's initiatives to address what it regarded as a

serious crisis affecting healthcare in this state and this Court's recognition that this legislative scheme sometimes requires an action to be extinguished even before it accrues. Her derisive rhetoric is an unhelpful distraction from the examination of the General Assembly's limited intentions, and of the statutes it enacted to achieve its stated public-policy goal of "preserving" mature causes of action while giving repose to new claims after a generous period of time.

Under the statute of repose, the plaintiff's wrongful-death claims were too late; under the relation-back statute, as the plaintiff construes it, they were too early. In either case, they were untimely, and the circuit court was correct to dismiss them.

I.
The Plaintiff Overlooks the Limited Purpose of the Relation-Back Statute to Preserve Existing Causes of Action, Not to Foster the Accrual of New Ones.

The plaintiff's interpretation of the relation-back statute as permitting her to bring a wrongful-death claim is flawed because it overlooks the limitation the General Assembly placed in the language of the statute itself: The statute is meant "for the purpose of *preserving* the cause of action ... *and for that purpose only*[.]" 735 ILCS 5/2-616(b) (emphasis added). Like the appellate court, the plaintiff concentrates on the language at the beginning of section 2-616(b), without also considering the statutory definition of purpose near the end—a purpose

that cannot reasonably be interpreted to avoid the effect of the statute of repose so as to nurture a premature claim into existence.

A. The express purpose of the relation-back statute allows it to be applied only to claims that accrued before being extinguished by the statute of repose.

The flaw in the plaintiff's argument is that it ignores the importance of whether a claim has accrued. She relies on cases in which claims *had* accrued, unknown to or unappreciated by the plaintiff, within the repose period, and were not filed until after that period expired. She points to no authority for the proposition on which her argument depends: that the relation-back statute treats a timely complaint as a doorstop, holding the door open long enough to allow a claim to accrue regardless of the repose period. That effect would contradict the statutory language, which strictly defines the limited purpose of relation back.

The plaintiff insists that this purpose includes the power to give life to claims that never were; but this Court has never reached that conclusion, and it has rejected efforts to protect such claims from being extinguished before they accrue. For her part, the plaintiff does not explain how a claim can be "preserved" if it did not exist at all during the four-year period before it was extinguished.

This is especially true of the plaintiff's claims for wrongful death, a statutory cause of action that was not recognized at common law and exists only due to legislative fiat. *See Carter v. SSC Odin Operating Co., LLC*, 2012 IL 113204, ¶ 32. As such, wrongful-death claims are strictly

defined by the statutory requirements the General Assembly placed on them. *See Miller v. American Infertility Group of Illinois*, 386 Ill. App. 3d 141, 144 (1st Dist. 2008). Chief among those requirements is the death of the individual at issue, and so long as that requirement is not met, the claim has not accrued—and no cause of action for wrongful death exists.

The plaintiff misconstrues the defendants' argument when she observes in one point heading that "a wrongful death case could relate back under Illinois law," and in another that "[a] wrongful death claim qualifies for the relation-back doctrine." *See* BR. OF APPELLEE at 6, 28. That's true, as a general proposition; despite what the plaintiff claims, the defendants do not contend "that wrongful death cases should not relate back because of their nature." *See* BR. OF APPELLEE at 6. There is no reason a wrongful-death claim filed outside the repose period cannot relate back to a point within the repose period—provided, that is, that it accrued before being extinguished by a statute of repose.

But that's the point: By its terms, the relation-back statute depends on the claim accruing *before* it is extinguished. How else to satisfy the statutory language that carefully sets forth the legislature's "purpose of *preserving* the cause of action ... and for that purpose *only*"? *See* 735 ILCS 5/2-616(b) (emphasis added). That language embraces existing claims that might be unknown to a plaintiff, as in the cases the plaintiff cites here. But she does not explain how to "preserve" something that does not exist.

1. The plaintiff's argument relies on cases in which the claims at issue accrued within the repose period.

Not only does the plaintiff's argument fail to account for claims that do not accrue before the repose period expires, but her own choices of authority underscore this requirement for relation back. While she cites a host of decisions in which a timely-filed complaint was deemed adequate to preserve those causes of action that existed in some fashion within the repose period, she points to no authority allowing the relation-back statute to supersede the statute of repose for the purpose of letting a cause of action accrue in the first place. *See* BR. OF APPELLEE at 8 (citing *Frigo v. Silver Cross Hosp. & Med. Ctr.*, 377 Ill. App. 3d 43 (1st Dist. 2007); *Compton v. Ubilluz*, 351 Ill. App. 3d 223 (2d Dist. 2004); *Castro v. Bellucci*, 338 Ill. App. 3d 386 (1st Dist. 2003); *Avakian v. Chulengarian*, 328 Ill. App. 3d 147 (2d Dist. 2002); *Marek v. O.B. Gyne Specialists II, S.C.*, 319 Ill. App. 3d 690 (1st Dist. 2001); *McArthur v. St. Mary's Hosp.*, 307 Ill. App. 3d 329 (4th Dist. 1999); *Cammon v. West Suburban Hosp. Med. Ctr.*, 301 Ill. App. 3d 939 (1st Dist. 1998)).

"In all of these cases," the plaintiff observes, referring to the decisions she and the appellate court cite, "amendments were allowed later than four years after the occurrence; many of them clearly involved not only a change of theory, but potentially an enlargement of the defendants' liability." BR. OF APPELLEE at 8.

But none of these cases involved a claim that did not even accrue during the repose period. The plaintiff fails to consider the importance of accrual, and therefore overlooks the distinguishing feature of all the authorities on which she relies.

She underscores the flaw in her argument when she compares this case to those in which amendments were allowed to permit "a change of theory." *See* BR. OF APPELLEE at 8. The case at bar involves something much more significant than a new theory of liability; the plaintiff seeks to add a wholly new and separate cause of action that did not even accrue until after the statute of repose had extinguished it. This is markedly unlike the cases on which the plaintiff relies, each of which involved a claim that *had* accrued during the repose period. In each case, the plaintiff merely remained unaware of an existing claim until after the repose period expired. In each case, a reviewing court held that the claim related back to the timely complaint and allowed the plaintiff to bring it after the repose period expired.

This is an unremarkable use of the relation-back statute for its intended purpose of "preserving [a] cause of action" that was filed after the period of repose but existed before that period expired. But it is considerably different from how the plaintiff insists it should be used—to give life to a claim that did not exist within the period of repose at all, and never accrued because the statute of repose extinguished it first.

2. If a claim filed before it accrues cannot avoid a statute of repose, a claim *deemed* filed before it accrues cannot have that effect.

The plaintiff not only fails to address this distinction; she is at pains to obscure it, all but ignoring the concept of accrual and the crucial role it plays in this case. Her reluctance to address the importance of accrual is particularly evident in her discussion of *Evanston Insurance*—a discussion that is nearly bereft of the word *accrual*, despite what this Court had to say about the effectiveness of claims that had not accrued. *See* BR. OF APPELLEE at 39–43 (citing *Evanston Ins. Co. v. Riseborough*, 2014 IL 114271).

None of the cases the plaintiff cites concerned a claim that did not even accrue within the repose period. To be fair, there are no cases concerning quite the same situation before this Court; that's what makes this a case of first impression. But *Evanston Insurance* is close, in the sense that it addresses the effect of a claim that was filed too early, before it accrued. When the plaintiff there argued that that claim should be considered a timely filing, this Court rejected that argument: "Evanston's argument that a plaintiff may avoid an applicable statute of repose by filing a premature complaint alleging claims *which have not fully accrued* has no support in the law." *Evanston Ins.*, 2014 IL 114271, ¶ 30 (emphasis added).

Evanston Insurance concerns a situation different from what's at issue here, but it sets forth a principled understanding that a claim has

no effect before it accrues—and if it is extinguished before it accrues, it never has any effect at all.

In rejecting the *Evanston Insurance* plaintiff's argument that its original complaint should be treated as a timely filing so as to avoid dismissal under the legal-malpractice statute of repose, this Court observed that the original complaint had been dismissed as premature and was therefore inadequate to beat the statute of repose. The plaintiff here acknowledges that the original complaint in *Evanston Insurance* was premature, but she sidesteps the reason why: The legal-malpractice claim it purported to assert had not yet *accrued*, because the alleged malpractice had not yet caused the harm that made for a cause of action. *Evanston Ins.*, 2014 IL 114271, ¶ 30. Having not "fully accrued," the Court held, the claim could not forestall the effect of the statute of repose. *Id.*

The importance of accrual is the reason this part of *Evanston Insurance* is relevant to this case. This Court recognized that accrual is significant to the issue of repose—that if a claim has not yet accrued, it does not avoid the running of a statute of repose. In that case, a claim *actually* filed before it accrued did not hold the door open so as to allow it to accrue. *Id.*, ¶ 30. Likewise, it stands to reason that a claim that would be *treated* as having been filed before it accrued, under the relation-back statute, cannot have that effect either—at least not when it did not even accrue within the repose period.

It is undisputed that the wrongful-death claims here did not accrue until after the repose period expired. But the plaintiff insists that the original negligence complaint, filed before the decedent died, allowed her to avoid the statute of repose, because she maintains that the relation-back statute calls for the wrongful-death claims to be treated as if they were filed when the initial complaint was filed—before the decedent died, and thus before those claims accrued. That argument is inconsistent with this Court's refusal to regard a claim as adequate to avoid a statute of repose when the claim had not yet accrued, an argument even the plaintiff admits the Court rejected "out of hand." BR. OF APPELLEE at 41. (She offers the odd suggestion that the terse rejection of that argument inures to her benefit by depriving the Court's holding of persuasive force. *See id.*)

Indeed, the plaintiff expressly avoids the notion that this Court might address the question of "whether section 5/2-616(b) is guilty of calling into existence causes of action that never were," claiming that that question is not before the Court. BR. OF APPELLEE at 44. But that is exactly the result of the appellate court's holding here.

The plaintiff underscores still another flaw in her argument by claiming that relation back has been permitted even when it might lead to "an enlargement of the defendants' liability." *See* BR. OF APPELLEE at 8. In the cases the plaintiff cites, the only potential enlargement of any defendant's liability was the plaintiff's ability to make a better case, or to

bolster an existing claim with additional evidence or examples of negligence. None of those decisions allowed a plaintiff to potentially enlarge a defendant's liability by setting forth a new cause of action that only came into existence after the repose period expired. No reported decision in Illinois endorses such a result, and with good reason: It would contradict the language and purpose of both the statute of repose and the relation-back statute.

B. Judicial constructions of other state codes do not support the application of the Illinois relation-back statute in this case.

Implicitly conceding that Illinois law contains no such decision, the plaintiff goes looking for support in other states, offering up a comparison to the statutory codes of Massachusetts and Georgia. *See* BR. OF APPELLEE at 13–18 (citing *Sisson v. Lhowe*, 954 N.E.2d 1115 (Mass. 2011), and *Wesley Chapel Foot & Ankle Ctr., LLC v. Johnson*, 650 S.E.2d 387 (Ga. App. 2007)). Since the relation-back statutes in those jurisdictions are considerably different from section 2-616(b), the decisions are of limited value in interpreting that section. *See People v. Reese*, 2015 IL App (1st) 120654, ¶ 74 (carjacking statutes in federal system and other states were "not compelling to an interpretation of the Illinois statute" because they were dissimilar to it). While other states' decisions construing "similar laws" may be given some respect and consideration, "the express language of an enactment is the best indication of the intent of the drafters," and "must precede any analogy

to interpretations of allegedly similar statutes by courts of other jurisdictions." *Aluma Systems, Inc. v. Frederick Quinn Corp.*, 206 Ill. App. 3d 828, 841–42 (1st Dist. 1990) (quoting *Koenig v. McCarthy Constr. Co.*, 344 Ill. App. 93, 97 (2d Dist. 1951)); *Kujbida v. Horizon Ins. Agency*, 260 Ill. App. 3d 1001, 1008 (1st Dist. 1994) (citing *In re Marriage of Hunt*, 78 Ill. App. 3d 653, 659 (1st Dist. 1979)).

Other states' interpretations of their own statutes are especially unpersuasive when the Illinois statute contains meaningfully different language, and in this case, one difference stands out sharply: Neither the Massachusetts statute nor the Georgia statute contains anything like the remarkable self-limiting language in the Illinois statute, setting forth its limited purpose of "preserving the cause of action." *See* 735 ILCS 5/2-616(b). Without that restriction, both statutes have a broader effect than the Illinois relation-back statute.

The breadth of that purpose is reflected in the operative language of the Massachusetts relation-back statute, which reads in full:

> Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment (including an amendment changing a party) relates back to the original pleading. [Mass. R. Civ. P. Rule 15(c) (2017).]

The Georgia statute is almost identical, differing from the Massachusetts section only in references to amendments that add or change parties, a subject not at issue in this case. OCGA § 9-11-15(c) (2017). But neither

statute bears any resemblance to section 2-616(b), and neither reflects the Illinois legislature's narrower purpose in codifying relation back.

Moreover, while *Wesley* contains language the plaintiff here finds helpful, the facts of that case differ from this one in their most significant feature: Unlike in this case, the decedent in *Wesley* died before the statute of repose extinguished her successor's wrongful-death claim. Since that claim accrued before being extinguished, it existed in a form that made it possible to be preserved—and would therefore have qualified for relation back even under the Illinois statute.

Even if the differences in statutory language (and the facts of *Wesley*) did not set those statutes apart from our own relation-back statute, the persuasive value of the majority decisions the plaintiff cites must be balanced against the dissenting opinions in both cases, setting forth the same concerns emphasized by the defendants in this case. Despite the plaintiff's lengthy discussion of *Sisson*, for instance, the majority opinion contains no support for relation back; in fact, the only place to find any discussion of relation back is in the dissent. *Sisson*, 954 N.E.2d at 1126 (Spina, J., dissenting). The majority said nothing at all about relation back—an omission that was not lost on the dissenting justice, who observed that under Massachusetts law, relation back "does not apply to a statute of repose because it would have the effect of reactivating a cause of action that the Legislature obviously intended to eliminate." *Id.* (Spina, J., dissenting) (internal citations omitted).

Accusing the majority of deliberately avoiding any mention of that principle, the dissenting justice criticized it for applying a "classic 'relation back' analysis, applicable to statutes of limitation, not statutes of repose." *Id.* (Spina, J., dissenting).

Similarly, in *Wesley*, the dissent took issue with the majority's application of the Georgia relation-back statute, criticizing a result that allowed the plaintiff to amend the complaint after the repose period to assert a "nonexistent" cause of action. *Wesley*, 650 S.E.2d at 393 (Andrews, P.J., dissenting).

Even without these dissenting views, the most the plaintiff could have hoped for in the law of other states was persuasive authority—but the majority opinions in *Sisson* and *Wesley*, evidently the best she could find outside our borders, are poor persuasion. The Massachusetts court's majority did not base its conclusion in *Sisson* on relation back, and the Georgia court's broader application of relation back in *Wesley* can be attributed to the more-liberal description of that doctrine by the state legislature that codified it there.

Indeed, given the different facts in *Wesley*, relation back would have been available in that case even under the Illinois statute, for the very reason it is not available in this case. Unlike in *Wesley*—or in any of the Illinois cases the plaintiff cites—the case at bar concerns the narrow situation in which a statutory cause of action does not accrue until after being extinguished by a statute of repose. The plaintiff offers nothing to

suggest that the Illinois legislature wanted to hold the door open long enough to let a wrongful-death claim accrue—or even, conceivably, to encourage a plaintiff to delay the progress of a timely-filed negligence action so a wrongful-death claim can accrue—and the language of the relation-back statute does not permit that result. This Court has rejected the notion that pleadings can be manipulated to evade a statute of repose for a claim that does not accrue within the repose period. *Evanston Ins.*, 2014 IL 114271, ¶ 30. That principle means that the wrongful-death claims were extinguished by the statute of repose before they accrued, and the earlier complaint could not nurture their accrual.

II.
The Plaintiff Mistakenly Contends that Achieving the Purpose of the Statute of Limitations Will Not Frustrate Legislative Goals of the Statute of Repose.

The plaintiff further errs in treating the statute of repose interchangeably with the statute of limitations. She mistakenly defends the appellate court for relying on cases that construed the relation-back statute's effect on statutes of limitation, rather than statutes of repose. Denying that this caused the appellate court to misinterpret the legislature's intent, the plaintiff insists that statutes of limitation and statutes of repose serve the same purpose, and that treating them interchangeably made no difference to the appellate court's reasoning. BR. OF APPELLEE at 22–26. It makes sense for a statute of limitations to yield to the relation-back statute, the plaintiff observes, so long as an

initial timely filing gave the defendant notice that an event would lead to a claim of some sort. Echoing the appellate court, she reasons that the same idea should apply to a statute of repose—and that since the initial complaint alerted the defendants that the events at issue had exposed them to potential liability, the purposes of both the statute of limitations and the statute of repose were satisfied, leaving no reason not to apply the relation-back statute. *Id.*

But this elaborate reasoning depends on the mistaken notion that both the statute of repose and the statute of limitations serve the same purpose, and that applying the relation-back statute in this circumstance does not interfere with that common purpose. While she acknowledges that relation back is justified by the reasoning that notice of potential liability reduces the possibility of prejudice—a concern that is promoted by the statute of limitations—the plaintiff does not show that this satisfies the concerns promoted by the statute of repose. Indeed, she takes no issue with the defendants' observation that this Court has never cited notice or prejudice as reasons for the statute of repose, or that it recognizes the importance of the statute of repose in keeping malpractice insurers, and therefore medical providers, from leaving the state. She merely professes confidence "that this Court will not hold that the sole purpose of this statute of repose is solely to benefit insurance carriers and not the defendants themselves." *See* BR. OF APPELLEE at 24.

But to focus on "who benefits" from the statute of repose is to misconstrue the legislature's purpose in enacting it—and the plaintiff overlooks the legislative goal of the statute of repose. The General Assembly was not out to "benefit" any class of persons or organizations; its purpose was to ensure that the people of Illinois had access to quality healthcare, a matter of public policy it felt to be in crisis at the time. The legislature originally enacted the statute of limitations because it recognized that potentially far-reaching liability for stale claims was discouraging medical insurers from covering Illinois providers—and in turn, threatening to drive physicians out of this state. But after the courts recognized a "discovery rule" exception to that statute, the legislature determined that the statute of limitations alone did not remove the disincentive for medical insurers to issue policies in Illinois, and amended it to include the four-year repose period. *See Hayes v. Mercy Hosp. & Med. Ctr.*, 136 Ill. 2d 450, 457–59 (1990) (citing *Mega v. Holy Cross Hosp.*, 111 Ill. 2d 416, 427 (1986), and *Anderson v. Wagner*, 79 Ill. 2d 295, 307 (1979)).

So while the statute of limitations had solved one problem posed by stale medical-malpractice claims, the discovery rule revealed that such claims pose other problems that transcend the prejudice caused by lack of notice. In the General Assembly's view, "extended exposure of physicians and other hospital personnel to potential liability for their care and treatment of patients" was a problem in and of itself—one that

was not solved simply by alerting a defendant that an event could lead to some still-unknown claim. *Hayes*, 136 Ill. 2d at 458.

These concerns did not arise in *Sompolski v. Miller*, 239 Ill. App. 3d 1087 (1st Dist. 1992), which involved a wrongful-death claim outside of the medical setting and thus did not touch upon the statute of repose. The plaintiff defends the appellate court's reliance on *Sompolski* by calling it "well-reasoned," "repeatedly cited with approval," and "never criticized," and says that it "answered the question of whether wrongful death claims fell within the scope of section 2-616(b)"—a question not at issue here. *See* BR. OF APPELLEE at 9. The plaintiff ignores the reason *Sompolski* does not apply to this case: It did not involve a medical-malpractice claim, let alone a claim extinguished by the statute of repose—let alone one that was extinguished before it could accrue. The legislative scheme that had been enacted to address the malpractice-insurance crisis played no role in the court's reasoning in *Sompolski*, and the rationale of that case has nothing to add to this one.

In the medical setting, the legislative concern behind the statute of repose is about more than protection against the deterioration of evidence. The societal interest in repose promotes the value of putting disputes to rest after a defined period of time—in the case of claims allegedly arising from medical care, four years. This interest has a value separate and apart from the preservation of evidence. This Court recognized long ago that "the repose and peace of society" was a concern

distinct from the need "to provide against the evils that arise from loss of evidence ... and the failing memory of witnesses." *Board of Educ. of Normal Sch. Dist. v. Blodgett*, 155 Ill. 441, 449 (1895) (quoting *Campbell v. Holt*, 115 U.S. 620, 631 (1885) (Bradley, J., dissenting)).

Though the *Blodgett* Court was interpreting a statute of limitations, its understanding of this distinction remains relevant today—when the "repose and peace of society" include being free from considerable escalations of potential liability stemming from claims that accrue so long after the care at issue that they fall outside the statute of repose.

The plaintiff cynically reduces the General Assembly's motives to a zero-sum game—one that pits insurance companies against personal-injury claimants and benefits one at the expense of the other. But the statute of repose was meant to benefit the state's population as a whole. Its legislative history reflects the General Assembly's intention to serve its constituents by enacting a public policy that does not drive healthcare providers from the state. The *amici* supporting the defendants' position articulate the same concerns that the General Assembly expressed when it enacted the statute of repose, vividly illustrating that those concerns have not ebbed with the passage of time. Indeed, the medical associations that have expressed those concerns as *amici* in this Court represent the very providers the legislature was concerned about.

This public-policy goal was well within the General Assembly's power, and even the plaintiff does not challenge its wisdom or legitimacy.

It is not enough—and it would not be proper—to declare that goal satisfied because the concerns of the statute of limitations have been satisfied.

Moreover, the decisions of this Court refute the plaintiff's notion that those concerns are interchangeable. Not only has this Court never cited notice or prejudice among the concerns promoted by the statute of repose; to the contrary, it has consistently enforced the statute of repose even in cases where there was no dispute that the defendant had notice of the events in question because an action arising from them was already underway. *See, e.g., Uldrych v. VHS of Illinois, Inc.*, 239 Ill. 2d 532, 542 (2011) (indemnification claim against defendant barred by statute of repose despite timely-filed original complaint against it); *Hayes*, 136 Ill. 2d at 458 (contribution claim against defendant barred by statute of repose despite timely-filed original complaint against it).

The plaintiff insists that the statute of repose should not bar an action so long as the defendant had notice within the repose period of *some* action arising from a transaction or event—but that's not what this Court held in *Hayes* or *Uldrych*, where the defendants were already defending against claims arising from the same events, and this Court still held that subsequently-filed claims were barred by the statute of repose. If a defendant's knowledge of litigation arising from an event is enough to let the relation-back statute overcome a statute of repose for subsequent claims, why didn't this Court hold that the subsequent

claims in *Hayes* and *Uldrych* survived the statute of repose? For that matter, why wasn't the premature legal-malpractice claim in *Evanston Insurance* enough to avoid the statute of repose—so long as it alerted the defendant to prepare for the likelihood of potential litigation?

Those cases demonstrate that while a statute of *limitations* might not bar a claim when a defendant has notice sufficient to anticipate it, a remedy for the lack-of-notice problem is not enough to let the courts overlook the statute of *repose*—and that a defendant's notice of one claim arising from a particular transaction or event is not enough to permit a different claim that does not accrue during the repose period. This Court's decisions to that effect refute the appellate court's notion that relation back supersedes repose as long as a defendant "received adequate notice of the same operative facts leading to the alleged medical negligence stated in an earlier, timely filed complaint." *See Lawler v. University of Chicago Med. Ctr.*, 2016 IL App (1st) 143189, ¶ 54.

The plaintiff offers nothing to reconcile the dismissal of the subsequent untimely claims in *Hayes* and *Uldrych* with the appellate court's reversal of such a claim here. That omission also prevents her from showing that relation back allows the purpose of the repose statute to be satisfied. Given the critical importance of the legislature's concerns in enacting this statute of repose, and the broader legislative scheme of which that statute is a part, the relation-back statute ought not be recognized as an exception to repose unless it is clear and unambiguous

that the legislature intended a claim to relate back in a particular circumstance. That cannot be said of a case such as this one. Quite to the contrary, the legislature's explicit limitation of the relation-back statute to "preserving the cause of action" demonstrates that it does not apply to a claim that was extinguished before it could accrue.

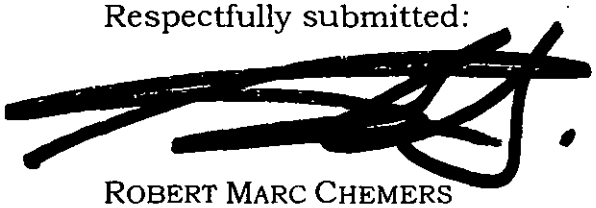
Mistakenly contending that relation back allows the legislative purpose of the statute of repose to be satisfied, the plaintiff fails to show that the appellate court's holding allows the statute of repose to serve its legislative goal. The appellate court's decision is at odds with this Court's respect for that goal, as distinct from the goal of the statute of limitation, and interferes impermissibly with a legislative scheme that firmly closes the door on the accrual of new claims after four years.

Conclusion

Far more than the claims of the plaintiff, this case concerns the General Assembly's goal of keeping quality medical care accessible to the citizens of Illinois. Concluding that this greater good depended on repose, the General Assembly called for the dismissal of any claim that does not accrue within four years after the medical care at issue—regardless of whether other claims have put the defendant on notice to prepare a defense. The statute of repose, the statutory mechanism for achieving this unimpeachable legislative goal, is well within the General Assembly's power; the narrow purpose of the relation-back statute suggests no different intent.

Because the plaintiff's wrongful-death claims are at odds with this legislative goal, the appellate court erred in holding that those claims could proceed. Its decision should be reversed, and the circuit court's order dismissing those claims should be reinstated.

Respectfully submitted:



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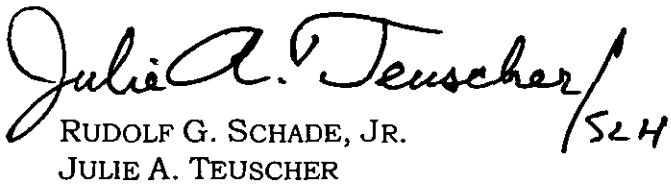

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Supreme Court Rule 341(c) Certificate of Compliance

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 5,473 words.

Respectfully submitted:

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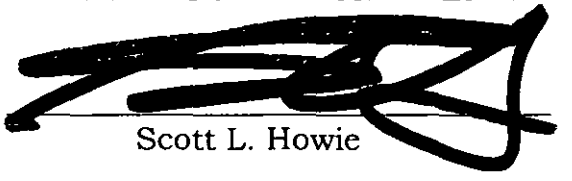
By: 
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