

IN BRIEF

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Malpractice Prevention Education for Oregon Lawyers

New Case Affects Tolling by Advance Payments

Oregon's advance payment statute provides that if a person making an advance payment under ORS 31.560 or 31.565 for "death, injury or destruction" gives written notice within 30 days after the first advance payment was made of the date of the applicable statute of limitations, that statute continues to run. ORS 12.155(1). If the required notice is not given, however, the statute of limitations is tolled as of the time the advance payment is made and until the notice "is actually given." ORS 12.155(2).

Since 1997, Oregon courts have limited the use of the tolling provisions of the advance payment statute to payments made by insurers based on *Minisce v. Thompson*, 149 Or. App. 746, 756, 945 P.2d 582 (1997). In *Minisce*, the Oregon Court of Appeals held that "the advance payment statutes do not toll the statute of limitations outside the setting of third-party claims against insurers."

However, on December 7, 2006, in an en banc decision, the Oregon Supreme Court overruled *Minisce* to the extent it held that ORS 12.155 was limited to insurers. In *Hamilton v. Paynter*, 342 Or. 48, 149 P.3d 131 (December 7, 2006), the Court held that the term "person" in ORS 12.155 did not apply exclusively to insurance companies. Instead, ORS 12.155 could be applied to any "person" as defined by ORS 174.100(5), which broadly defines "person" to include "individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies."

As a result, the *Hamilton* decision greatly expands the reach of ORS 12.155.

Practitioners who are representing a client in a case that alleges damages for "death, injury or destruction" and in which the statute of limitations may be an issue should carefully consider whether the tolling provisions of ORS 12.155 now apply. If you represent the defendant in such a claim, you should determine whether your client has made an advance payment as defined by ORS 31.560 or 31.565 and, if so, whether the defendant has provided the notice required by ORS 12.155(1) to avoid the statute's tolling provision under ORS 12.155(2).

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NOTE: Please make a note of the *Hamilton* case in your copy of the Oregon Statutory Time Limitations Handbook, at §45.1(C). If you do not have a copy of the handbook and would like one, call the PLF at 503-639-6911 or 800-452-1639 and ask for Julie Weber.

DISCLAIMER

IN BRIEF includes claim prevention information that helps you to minimize the likelihood of being sued for legal malpractice. The material presented does not establish, report, or create the standard of care for attorneys. The articles do not represent a complete analysis of the topics presented, and readers should conduct their own appropriate research.