

TEXAS INSURANCE LAW NEWSBRIEF

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WHOSE SUIT IS IT ANYWAY? TEXAS APPELLATE COURT REJECTS MISIDENTIFICATION ARGUMENT TO TOLL STATUTE OF LIMITATIONS

Last week, the Texas Court of Appeals in Dallas rejected an appeal from summary judgment awarded to Navasota Chair LLC finding claims against them were time barred by a two-year statute of limitations. In *The Jacob Search Group, LLC, Don Jacob, and Becky Jacob v. Navasota Chair LLC F/K/A Ergogenesis LLC*, No. 05-18-00117-CV, 2019 WL 409462 (Tex. App.—Dallas, Feb. 1, 2019) Don Jacob, CEO of the Jacob Search Group, filed suit seeking damages for an injury suffered on August 22, 2013, when the back of his chair “snapped off” at work. The chair was manufactured by Ergogenesis LLC which in September 2013, changed its name to Navasota Chair LLC after selling its assets (including Ergogenesis name) to Ergogenesis Workplace Solutions, LLC. On the day of the incident, Don Jacob emailed the general counsel for Ergogenesis and a claim was presented to Travelers (Ergogenesis’s insurance carrier) for Jacob’s injuries.

Almost two years later, on August 13, 2015, the Jacobs sued Ergogenesis Workplace Solutions asserting claims for negligence and products liability. But it was not until September 9, 2015, that Navasota was added in an amended petition. Navasota responded by asserting a statute of limitations defense and filed summary judgment—alleging that its addition as a defendant on September 9, 2015, was more than two years from Jacobs’ injury and was therefore time-barred by the statute of limitations. In response, Jacobs argued that the doctrine of misidentification tolled the statute of limitations, precluding Navasota’s summary judgment. While the motion was pending, the parties stipulated to several facts, including: that Navasota did not receive notice of suit until September 23, 2015. The trial court granted Navasota’s summary judgment and Jacobs filed this appeal contending the trial court erred as the statute of limitations was tolled. His theory was that, although Navasota was misidentified, it had knowledge of the facts of the suit, before the limitations period expired.

The Court noted that generally misidentification does not toll the statute of limitations, however, an exception is recognized in instances where two separate but related entities utilizing a similar trade name exist, and the correct entity had notice of suit and was neither misled or disadvantaged by the mistake. Jacob’s argued that the limitations period was tolled because Navasota had notice of the facts before limitations expired which tolled the limitations period. The Court rejected this argument, however, noting that “[k]nowledge of the lawsuit, not knowledge of the underlying facts, is required.” And it was uncontroverted Navasota did not have notice of the suit until September 23, 2015, the tolling exception did not apply, and therefore, the statute of limitations had expired. Accordingly, the trial court’s grant of summary judgment in favor of Navasota was affirmed.