

# Case Law Updates

Edited by Claire Mason Lee and Emily M. Ballenberger

## Michigan Court of Appeals

*Brown v Hayes*, 270 Mich App 491 (2006).

The court held that a physical therapist is not qualified to execute an affidavit of meritorious defense on behalf of an occupational therapist, pursuant to the requirements of MCL 600.2169(1)(b).

*Mazumder v University of Michigan*, 270 Mich App 42 (2006).

The plaintiff failed to comply with the statute of limitations in a wrongful death medical malpractice action because she misinterpreted the notice tolling provision. The court decided to apply equitable tolling based on the plaintiff's misinterpretation of the tolling provision.

*Johnson v Hurley Medical Group*, (No. 262143, rel'd 4/13/06).

The court, without any analysis, followed the holding of *Mazumder* and applied the doctrine of equitable tolling to save the plaintiff's claim. The court also acknowledged that the conflict panel's decision regarding the retroactivity of *Ousley v McLaren*, 264 Mich App 486 (2004) will not effect its decision.

After *Johnson* was released, the court issued two unpublished decisions also following the holding of *Mazumder*. See *Long v Goodson*, (No. 261049, rel'd 4/18/06); *Hopkins v Graham*, (No. 261867, rel'd 4/20/06).

*Ward v Siano*, (No. 265599, rel'd 4/13/06).

The court noted that it was required to follow the holding of *Mazumder*, but stated it disagreed with *Mazumder*'s holding and declared a conflict with it.

*Robins v Garg*, 270 Mich App 519 (2006).

Although in previous decisions the Michigan Court of Appeals strictly construed the statutory requirement that the defendant and the plaintiff's experts must have matching specialties in order for an affidavit of merit to be valid, the court recently reversed this trend in *Robins*. The court held that an affidavit of merit signed by a family practitioner could be used against a general practitioner because of the large overlap between the two types of practice.

Blmfield.PD.FIRM.773087-1