

Noticing Error Derails Efforts to Open Two-Year Window Reviving Time-Barred Sexual Abuse Claims in Pennsylvania

By: Frank J. Perch, III
Insurance Coverage and Bad Faith Alert
2.2.21

On Monday, February 1, Pennsylvania Governor Tom Wolf announced that due to the failure of the office of the Pennsylvania Secretary of State to publish a required notice, the Pennsylvania legislature will not be able to go forward with a bill that would have sent to the voters a state constitutional amendment opening a two-year window for victims of childhood sexual abuse to bring civil actions previously barred by the statute of limitations. The error led to the resignation of Secretary of State Kathy Boockvar.

Twice in the past, in 2002 and 2019, the legislature extended the time after majority during which childhood sexual abuse victims could commence a civil action, first to age 30 and then to age 55. However, both amendments provided that they were not intended to revive any cause of action that was time-barred as of their enactment. Efforts to enact a reviver law, granting a window of opportunity for those who could not take advantage of the prior extensions, were focused on a state constitutional amendment because some legislators questioned whether a law retroactively divesting a defendant of an accrued complete defense would violate the "remedies clause" of the state constitution. However, the constitutional amendment procedure requires the amendment to be approved by two consecutive sessions of the state legislature, with publication of notices each time, before it can be submitted to the voters for final approval. The Secretary's failure to issue a notice of the second legislative action doomed chances that the amendment could become law in 2021.

The noticing error means that it will take at least two additional years, and perhaps more, to properly place a constitutional amendment on the ballot. As a result, pressure is building on the legislature to move forward with enacting a reviver statute, and letting its constitutionality be tested in the courts – which would place the onus on defendants to raise and litigate the issue. Parties having an interest in the matter, as potential claimants, defendants or insurers, should continue to monitor legislative developments closely.

If a reviver is enacted, the largest group of beneficiaries would be those who were over age 30, but younger than 55, when the 2019 extension was passed, and thus had claims already time-barred under prior law. However, a reviver would also reactivate the claims of even older plaintiffs that were already long time-barred when time to sue was extended to age 30 in 2002. Claimants alleging abuse in the 1940's or 1950's could seek relief, driving searches for ancient insurance policies and potentially affecting plans and settlements in pending bankruptcies.

If you have questions or would like additional information, contact Frank Perch (perchf@whiteandwilliams.com; 215.864.6273) or a member of the Insurance Coverage and Bad Faith group.

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