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## A Tort Report: *Christ v. Exxon Mobil* and the Extension of the Discovery Rule to Third-Party Representatives of Decedents in Wrongful Death and Survival Suits

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# A TORT REPORT: *CHRIST v. EXXON MOBIL* AND THE EXTENSION OF THE DISCOVERY RULE TO THIRD-PARTY REPRESENTATIVES OF DECEDENTS IN WRONGFUL DEATH AND SURVIVAL SUITS

JEREMY MCMANUS\*

**Abstract:** On June 23, 2015, the Wisconsin Supreme Court allowed representatives of deceased employees of a tire manufacturing facility to use the “discovery rule” to extend the statute of limitations for their wrongful death and survival suits associated with the decedents’ forced benzene exposure at the facility, provided they could show the information necessary for making their claims had not been available upon diligent effort within the statute’s timeframe. The majority reasoned that public policy is in favor of allowing meritorious claims to be heard, there is no significant difference between direct victims and representatives to render an extension untenable, and the preservation of existing barriers to stale claims being heard will allow for the smooth extension of the discovery rule. This Comment argues in favor of the majority’s approach, as it best protects the ability of all tort victims to recover damages they are owed.

## INTRODUCTION

On July 13, 2006, former employees and representatives of deceased employees of an Eau Claire, Wisconsin tire manufacturing facility filed suit against parties associated with operating the facility alleging injuries from forced benzene exposure.<sup>1</sup> Those plaintiffs who were personal representatives of decedents made their claims through survival suits, whereby they “stood in the shoes” of the decedents to recover damages benefitting the decedents’ estates.<sup>2</sup> These plaintiffs also filed wrongful death suits for their own injuries stemming from the loss of the decedents.<sup>3</sup>

After the resolution of various pre-trial matters, the remaining defendants filed a motion on March 5, 2012 to dismiss the complaints of eight of

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<sup>1</sup> *Christ v. Exxon Mobil Corp.*, 866 N.W.2d 602, 605 (Wis. 2015).

<sup>2</sup> *Id.* at 607, 613 (quoting *Estate of Merrill v. Jerrick*, 605 N.W.2d 645, 650 (Wis. Ct. App. 1999)).

<sup>3</sup> *Id.* at 608.

the plaintiffs who represented decedents.<sup>4</sup> The defendants argued that the plaintiffs had filed their wrongful death and survival suits after the running of the applicable three-year statute of limitations provided for by Section 893.54(2) of the Wisconsin Statutes.<sup>5</sup> According to the defendants, wrongful death and survival suits accrue when the decedent dies and do not accrue pursuant to the “discovery rule” that is applicable to injured parties themselves, whereby a claim does not accrue until the harmed party could have, through diligent effort, obtained the knowledge necessary to file a claim.<sup>6</sup>

On April 30, 2012, the Eau Claire County Circuit Court granted the defendants’ motion to dismiss because the court found that the discovery rule does not apply to wrongful death and survival claims made by third-party representatives of decedents.<sup>7</sup> On February 12, 2014, the Wisconsin Court of Appeals summarily reversed the Eau Claire County Circuit Court, finding that the claims of the eight plaintiff-representatives accrued within the statute of limitations provided that they could show upon remand that they were diligent in finding the information necessary to file their claims.<sup>8</sup> After the Court of Appeals denied a subsequent motion for reconsideration, the defendants appealed to the Wisconsin Supreme Court.<sup>9</sup>

The Wisconsin Supreme Court affirmed the Court of Appeals on June 23, 2015, holding that the discovery rule applies to third-party representatives of decedents in wrongful death and survival suits.<sup>10</sup> A majority of the Supreme Court stated that the discovery rule that already exists for regular plaintiffs allowing the extension of statutes of limitation should extend to third-party plaintiffs because there is strong public policy in favor of hearing meritorious claims and there is no significant difference between the two types of plaintiffs that would render such an extension untenable.<sup>11</sup> The majority also pointed out that this decision will not open the floodgates for courts to have to hear stale claims because its decision leaves intact several other existing barriers which also work to prevent the progression of stale claims.<sup>12</sup> The dissent, however, emphasized that the statute of limitations

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<sup>4</sup> *Id.* at 606.

<sup>5</sup> *Id.* at 606–07; see WIS. STAT. § 893.54 (2013–2014).

<sup>6</sup> See *Christ*, 866 N.W.2d at 605; see also *Accrues*, BLACK’S LAW DICTIONARY (6th ed. 1990) (defining “accrues” as when a suit may be maintained thereon, and stating that the law in this regard differs from state to state and by nature of action (for example, type of breach of contract, tort, etc.)).

<sup>7</sup> See *Christ*, 866 N.W.2d at 607.

<sup>8</sup> *Christ v. Exxon Mobil Corp.*, No. 2012AP1493, (Wis. Ct. App. Feb. 12, 2014) (order remanding the case to the circuit court to determine if the statute of limitations barred plaintiffs’ claims after extension of the discovery rule).

<sup>9</sup> See *Christ*, 866 N.W.2d at 607.

<sup>10</sup> See *id.* at 606.

<sup>11</sup> See *id.* at 610, 612.

<sup>12</sup> See *id.* at 615–16.

under Section 893.54 of the Wisconsin Statutes is harm-based and that the harm giving rise to wrongful death and survival claims always occurs upon the death of the decedent.<sup>13</sup>

Part I of this Comment summarizes the factual and procedural history of *Christ*. Part II discusses the majority's decision to extend the discovery rule to allow the claims of third-party representatives of decedents to accrue when they could not have found all of the information necessary to file their claims upon diligent effort. Finally, Part III agrees with the Wisconsin Supreme Court's extension of the discovery rule to third-party representatives of decedents because it best preserves the legal right of all tort victims to recover damages resulting from those torts.

### I. ACCRUAL OF WRONGFUL DEATH AND SURVIVAL CLAIMS

On July 13, 2006, several past employees, as well as representatives of deceased past employees, of an Eau Claire, Wisconsin tire manufacturing facility run by the Uniroyal Goodrich Tire Company, Inc. filed a joint lawsuit alleging injuries as a result of employees' forced exposure to benzene and products containing benzene at the facility.<sup>14</sup> The lawsuit alleged that those associated with operating the facility were liable for the benzene-caused injuries due to negligence, strict liability, and failure to warn.<sup>15</sup> Those plaintiffs who were third-party representatives of decedents made their claims by way of survival suits, which allow those representatives to "stand in the shoes" of decedents to make claims for the benefit of the decedents' estates.<sup>16</sup> Additionally, these third-party representatives brought separate wrongful death actions to recover for their own injuries resulting from the loss of the decedents.<sup>17</sup>

After the addition of nine plaintiffs and three defendants on December 28, 2007, several pre-trial motions were filed.<sup>18</sup> Among these pre-trial motions was the defendant's motion to dismiss the claims of eight of the plain-

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<sup>13</sup> See *id.* at 618 (Roggensack, C.J., dissenting); see also WIS. STAT. § 893.54 (2013–2014).

<sup>14</sup> Complaint, *Christ v. Exxon Mobil Corp.*, 06CV420 (Wis. Cir. Ct. July 13, 2006); see CTR. FOR DISEASE CONTROL & PREVENTION, CHEMICAL EMERGENCIES: FACT SHEET BENZENE (Aug. 29, 2005), <http://www.bt.cdc.gov/agent/benzene/basics/pdf/facts.pdf> [perma.cc/HH68-R44X] (explaining that long-term benzene exposure, of more than one year, most seriously causes leukemia, which is cancer of the blood-forming organs). Non-lethal effects of long-term benzene exposure include harm to bone marrow and the immune system, excessive bleeding, irregular menstrual periods, and decreased ovary and red blood cell size. See CTR. FOR DISEASE CONTROL & PREVENTION, *supra*.

<sup>15</sup> *Christ v. Exxon Mobil Corp.*, 866 N.W.2d 602, 606 (Wis. 2015).

<sup>16</sup> *Id.* at 613.

<sup>17</sup> *Id.* at 608.

<sup>18</sup> *Id.* at 606; Amended Complaint, *Christ v. Exxon Mobil Corp.*, 06CV420 (Wis. Cir. Ct. Dec. 28, 2007).

tiffs who represented decedents for failure to file their wrongful death and survival claims within the three-year statute of limitations included in Section 893.54(2) of the Wisconsin Statutes.<sup>19</sup> Though the defendants agreed that injured parties may use the “discovery rule” to enlarge the statute of limitations when the information necessary to file their claims could not have been found upon diligent effort within that period, the defendants nonetheless contended that the discovery rule is inapplicable to wrongful death and survival claims made by third-party representatives of decedents.<sup>20</sup>

On April 30, 2012, the Eau Claire County Circuit Court granted the defendant’s motion to dismiss the claims of the eight plaintiff-representatives, finding that the discovery rule was not applicable to third-party representatives of decedents in wrongful death and survival suits.<sup>21</sup> Instead, the circuit court ruled that the statute of limitations in wrongful death and survival suits brought by third-party representatives of decedents begins running at the death of the decedent.<sup>22</sup> Thus, the circuit court found that the eight plaintiff-representatives could not satisfy the three year statute of limitations required under the statute because the deaths of the decedents occurred over three years before they filed their claims.<sup>23</sup>

The eight plaintiff-representatives then appealed to the Wisconsin Court of Appeals, which summarily reversed the circuit court on February 12, 2014.<sup>24</sup> The Court of Appeals held that the discovery rule is applicable to wrongful death and survival claims made by third-party representatives of decedents.<sup>25</sup> In so holding, the court found that the eight plaintiff-representatives could satisfy the statute of limitations upon showing that they were diligent in finding the information necessary for making their claims.<sup>26</sup> The defendants then filed a motion for reconsideration, which the Court of Appeals denied, and the defendants then appealed to the Wisconsin Supreme Court.<sup>27</sup>

On June 23, 2015, the Wisconsin Supreme Court affirmed the Court of Appeals, finding that the discovery rule applies to wrongful death and survival claims made by third-party representatives of decedents.<sup>28</sup> The Wis-

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<sup>19</sup> WIS. STAT. § 893.54 (2013–2014); *Christ*, 866 N.W.2d at 606–07.

<sup>20</sup> *See Christ*, 866 N.W.2d at 605.

<sup>21</sup> *Id.* at 607.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Christ v. Exxon Mobil Corp.*, No. 2012AP1493 (Wis. Ct. App. Feb. 12, 2014) (order remanding the case to the circuit court to determine if the statute of limitations barred plaintiffs’ claims after extension of the discovery rule).

<sup>26</sup> *See id.*

<sup>27</sup> *Christ*, 866 N.W.2d at 607.

<sup>28</sup> *Id.* at 605.

consin Supreme Court then remanded the case to the circuit court so that it could determine whether the eight plaintiffs were diligent in finding the information necessary to make their claims.<sup>29</sup>

## II. THE WISCONSIN SUPREME COURT'S EXTENSION OF THE DISCOVERY RULE TO THIRD-PARTY REPRESENTATIVES OF DECEDENTS IN WRONGFUL DEATH AND SURVIVAL SUITS

The Wisconsin Supreme Court affirmed the Court of Appeals' extension of the discovery rule to third-party representatives of decedents in wrongful death and survival suits because it found that plaintiffs who represent third parties are not different enough from direct plaintiffs to sufficiently frustrate the underlying policy considerations which gave rise to the discovery rule.<sup>30</sup> The opinion, written by Justice David T. Prosser and joined by a majority of the Wisconsin Supreme Court, held that the discovery rule can apply to wrongful death and survival suits filed by third-party representatives of decedents because the benefits of the application outweigh whatever detriments would be created.<sup>31</sup>

### *A. Extending the Discovery Rule to Third-Party Representatives of Decedents Who File Wrongful Death and Survival Claims*

The Wisconsin legislature and the Wisconsin Supreme Court recognize that damages caused by deaths can extend to those beyond the deceased, such as family members.<sup>32</sup> For this reason, Wisconsin statutorily authorizes wrongful death and survival claims so that representatives of deceased tort victims can recover the full amount of damages caused by the tortfeasor.<sup>33</sup>

Taking each in turn, wrongful death claims in Wisconsin are brought pursuant to Section 895.03 of the Wisconsin Statutes.<sup>34</sup> Wrongful death claims are derivative, meaning that their viability entirely depends upon the hypothetical ability of decedents to bring suit had they not died.<sup>35</sup> Wrongful death actions extend to personal losses that the representatives suffered

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<sup>29</sup> *See id.* at 606.

<sup>30</sup> *See* *Christ v. Exxon Mobil Corp.*, 866 N.W.2d 602, 612 (Wis. 2015).

<sup>31</sup> *See id.*

<sup>32</sup> *See id.* at 608.

<sup>33</sup> *See id.* at 608–09 (clarifying that wrongful death claims are brought pursuant to Section 895.03 of the Wisconsin Statutes and that survival suits are brought pursuant to Section 895.01 of the Wisconsin Statutes); *see also* WIS. STAT. §§ 895.01, 895.03 (2013–2014).

<sup>34</sup> WIS. STAT. § 895.03.

<sup>35</sup> *Christ*, 866 N.W.2d at 609 (giving the example that a decedent's representative could not file a wrongful death claim if the decedent waived liability for the conduct that resulted in the decedent's death because the decedent would have been barred from bringing a claim for non-fatal injuries).

from the loss of the decedent, such as the loss of society and companionship.<sup>36</sup> Additionally, Section 893.54(2) of the Wisconsin Statutes subjects wrongful death actions to a three-year statute of limitations.<sup>37</sup>

In extending the discovery rule to allow for third-party representatives of decedents to enlarge the statute's three-year statute of limitations for wrongful death claims when the information necessary for bringing the claims could not have been found upon diligent effort within that timeframe, the Wisconsin Supreme Court noted that the same public policy objectives that led to the creation of the discovery rule are advanced by its extension to third-party representatives of decedents.<sup>38</sup> According to the Wisconsin Supreme Court, the discovery rule is driven by public policy concerns, and there is large public policy in favor of allowing meritorious claims to be heard.<sup>39</sup> In contrast, the risk of harm in extending the discovery rule to third-party representatives of decedents to the competing public policy of courts not being bogged down by stale claims is minimal and worth the risk.<sup>40</sup> Additionally, the Wisconsin Supreme Court noted that allowing the discovery rule for direct plaintiffs but not for representatives of decedents in wrongful death suits could affirmatively create public policy nightmares, such as motivating tortfeasors to kill victims instead of badly injuring them.<sup>41</sup>

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<sup>36</sup> *Id.* at 609; *see* WIS. STAT. § 895.04.

<sup>37</sup> WIS. STAT. § 893.54(2) (2013–2014); *Christ*, 866 N.W.2d at 606–07.

<sup>38</sup> *See Christ*, 866 N.W.2d at 612.

<sup>39</sup> *See id.* at 610.

<sup>40</sup> *See id.*

<sup>41</sup> *See id.* at 612. The Wisconsin Supreme Court used the following hypothetical to illustrate this point:

X is killed instantly by a negligent driver in a hit and run accident. X's beneficiaries have at least three years to file a wrongful death claim under Wis. Stat. §§ 895.03, 895.04, and 895.54(2). Under these hypothetical facts, X could not have brought a claim at the time of his death because he did not know the identity of the negligent driver. Thus, only a third party would be able to discover the hit and run driver's identity to facilitate a claim. If X's personal representative or statutory beneficiary filed the claim within three years of death, there would be no dispute whatsoever about what the decedent knew at the time of death—it would not matter. . . . Under the defendant's theory, if a deceased person's wrongful death beneficiaries did not discover the identity of the hit and run driver until a week after the three-year period ended, they would be unable to recover *any* of the damages enumerated in Wis. Stat. § 895.04(4), which are *their* damages. Conversely, the hit and run driver would be rewarded for killing the victim instead of badly injuring him, and he would not have to show that the passage of time had created difficulties in defending the case. This is not just.

*Id.*

Survival suits, on the other hand, are brought pursuant to Section 895.01 of the Wisconsin Statutes.<sup>42</sup> Survival suits, unlike wrongful death suits, can only be brought to benefit the decedent's estate.<sup>43</sup> Thus, survival suits operate on the premise that the third-party representative is able to "stand in the shoes" of the decedent in filing the claim.<sup>44</sup>

As it found with wrongful death suits, a majority of the Wisconsin Supreme Court found that extending the discovery rule to third-party representatives of decedents in survival suits does not upset public policy concerns to such a degree that the benefits of extending the rule are outweighed.<sup>45</sup> Furthermore, the Wisconsin Supreme Court found it logically consistent for representatives otherwise standing in the shoes of decedents in survival suits to similarly benefit from the application of the discovery rule.<sup>46</sup>

### *B. The Preservation of Existing Checks on the Progression of Stale Claims*

To make the decision whether to apply the discovery rule to third-party representatives of decedents in wrongful death and survival suits, the Wisconsin Supreme Court weighed the public policy benefits and detriments of the application.<sup>47</sup> In deciding that the public policy benefits of extending the discovery rule outweigh the detriments, the majority decision noted three distinct existing barriers to the progression of stale claims, which it reasoned collectively ensure that the public policy benefit of meritorious claims being heard outweigh any public policy detriments that exist.<sup>48</sup>

First, the discovery rule's requirement that third-party representatives must be diligent in discovering the information necessary for making their claims provides a check on stale claims being heard because stale claims are more likely to occur when plaintiffs are not diligent in discovering that information.<sup>49</sup> Once a defendant raises the statute of limitations as an affirmative defense the burden is on the plaintiff to show that the information necessary for making the claim was not available upon diligent effort within the statute of limitations timeframe.<sup>50</sup>

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<sup>42</sup> WIS. STAT. § 895.01 (2013–2014) (explaining that a survival suit survives because it is considered damage to the person); *Christ*, 866 N.W.2d at 608.

<sup>43</sup> *Christ*, 866 N.W.2d at 608.

<sup>44</sup> *Id.* at 613.

<sup>45</sup> *See id.*

<sup>46</sup> *See id.*

<sup>47</sup> *See id.* at 615.

<sup>48</sup> *See id.* at 615–16.

<sup>49</sup> *See id.*

<sup>50</sup> *See id.* at 616.

Second, time passage in general is a barrier to stale claims being heard because it makes it more difficult for plaintiffs to meet their burden.<sup>51</sup> Because a plaintiff's burden is not reduced due to time passage, a plaintiff necessarily has a more difficult time winning a case after the statute of limitations has passed.<sup>52</sup>

Finally, Wisconsin common law allows for a court to affirmatively refuse to hear a case that it determines, for whatever reason, would "place too unreasonable a burden on the negligent tortfeasor."<sup>53</sup> One factor that could place an unreasonable burden on the negligent tortfeasor is the amount of time that has elapsed since the running of the statute of limitations.<sup>54</sup> Thus, the Wisconsin Supreme Court pointed out that, just because third-party representatives of decedents *are permitted to* extend the statute of limitations when they could not have found the information necessary for making their claims within that period, this does not mean that a court has an *obligation* to grant the extension.<sup>55</sup>

### C. *The Dissent of Chief Justice Roggensack*

In a dissenting opinion, Chief Justice Patience Drake Roggensack emphasized that the harm giving rise to wrongful death claims is the death of the decedent, and not the potentially unknowable facts that would have been relevant to a claim brought by the decedent had the injuries been non-fatal.<sup>56</sup> Thus, even though decedents may have used the discovery rule to extend the statute of limitations if they had survived so that they could find the facts necessary for making their claims, the fact underlying any wrongful death claim is the indisputably known fact that the decedent died.<sup>57</sup> Additionally, Chief Justice Roggensack pointed out that the nature of a derivative action is that representatives of decedents cannot make claims that the decedents could not have made had they survived, and the statute of limitations for direct tort victims begins when the injury occurs.<sup>58</sup> Thus, the derivative nature of wrongful death claims bars a representative from benefitting from a statute of limitations extension that the decedent could not have benefited from had the injuries been non-fatal.<sup>59</sup> Accordingly, Chief Justice

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<sup>51</sup> *See id.* (stating that, generally, "[a] plaintiff will often find that proving his case has become more difficult because time has passed").

<sup>52</sup> *See id.*

<sup>53</sup> *See id.* at 616 (quoting *Cole v. Hubanks*, 681 N.W.2d 147, 150 (Wis. 2004)).

<sup>54</sup> *See id.*

<sup>55</sup> *See id.*

<sup>56</sup> *See id.* at 620 (Roggensack, C.J., dissenting).

<sup>57</sup> *See id.*

<sup>58</sup> *See id.*

<sup>59</sup> *See id.*

Roggensack stated that the statute of limitations in wrongful death suits should run from the date of the death of the decedent.<sup>60</sup>

Regarding survival suits, Chief Justice Roggensack argued that the statute of limitations begins running upon the death of the decedent by virtue of the fact that the nature of survival suits is for representatives to “stand[] in the shoes” of the decedents, and the statute of limitations for decedents would have begun to run, had they not died, at the time they sustained their injuries.<sup>61</sup>

Chief Justice Roggensack’s dissent also claimed that the majority erred in ignoring previous Wisconsin cases stating that the statute of limitations in wrongful death and survival suits begins running upon the death of the decedent.<sup>62</sup> Although the majority argued that these cases were inapplicable because they pre-dated the creation of the discovery rule, Chief Justice Roggensack stated that wrongful death and survival suits are simply different enough claims from claims brought directly by tort victims that the discovery rule did not have the effect of nullifying the holdings of these cases.<sup>63</sup>

### III. ENSURING COMPENSATION FOR ALL TORT VICTIMS

The majority’s approach best allows all tort victims to recover damages they are owed because it best preserves the public policy considerations behind the creation of the discovery rule.<sup>64</sup> The creation of the discovery rule was rooted in concerns that tort victims were helpless to recover damages that they were morally entitled to due to arbitrary legal barriers that they could not overcome no matter how diligently they pursued their claims.<sup>65</sup> For this reason, Wisconsin adopted the discovery rule to allow all tort victims the same basic right: to recover damages to make themselves whole after suffering injuries through no fault of their own.<sup>66</sup>

Although the majority’s decision benefits all tort victims, data suggests that the families of blue collar workers killed by the negligence of large companies especially benefit from extension of the discovery rule to wrongful death and survival claims because blue collar workers are disproportionately the victims of the torts underlying those claims.<sup>67</sup>

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<sup>60</sup> See *id.* at 618.

<sup>61</sup> See *id.* at 622 (quoting *Estate of Merrill v. Jerrick*, 605 N.W. 2d 645, 650 (Wis. Ct. App. 1999)).

<sup>62</sup> See *id.* at 618–19.

<sup>63</sup> See *id.*

<sup>64</sup> See *id.* at 602, 610, 613 (majority opinion).

<sup>65</sup> See *id.* at 612.

<sup>66</sup> See *id.* at 610.

<sup>67</sup> See Michael L. Rustad, *Nationalizing Tort Law: The Republican Attack on Women, Blue Collar Workers and Consumers*, 48 RUTGERS L. REV. 673, 735 (1996) (stating that efforts at so-called “tort reform” most negatively impact blue collar workers because “[b]lue collar workers

The majority correctly understood that wrongful death and survival suits brought by third-party representatives of decedents cannot be successful without the discovery of information that may not be available until after the statute of limitations runs.<sup>68</sup> For this reason, as the majority pointed out, the court would indeed be encouraging tortfeasors to kill victims instead of badly injuring them if it held that the discovery rule did not apply to wrongful death and survival suits because those tortfeasors would have a better chance of escaping liability through the running of the statute of limitations.<sup>69</sup>

Chief Justice Roggensack's dissent misunderstands the point and function of the discovery rule at the expense of tort victims.<sup>70</sup> According to Chief Justice Roggensack, the discovery rule should only apply to direct tort victims because wrongful death and survival claims of third-party representatives of decedents are so closely tied to the claims of direct tort victims that the two statutes of limitation should begin running at the same time.<sup>71</sup> However, it is undisputed that the statute of limitations *begins* running at the time of the injury.<sup>72</sup> Rather, what is disputed is whether the statute of limitations can be *extended* by *restarting* it on the date that the third-party representative could have found the information necessary for making the claim.<sup>73</sup> It is unnecessarily confusing and unhelpful to split hairs over whether the discovery rule functions by allowing the statute of limitations to begin running in the first place on the date that the information necessary for making the claim could have been discovered upon diligent effort, or whether it allows the statute of limitations to restart to accommodate a three-year period after that date.<sup>74</sup>

Chief Justice Roggensack misses that the focus, then, is not on when the statute of limitations starts, but when it eventually ends.<sup>75</sup> The only argument Chief Justice Roggensack makes on the point that the statute of limitations should not be extended past three years is that there is nothing to investigate once the date of the death is known.<sup>76</sup> However, information

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predominate in all work-related products liability cases leading to punitive damages"); Lester Brickman, *The Asbestos Litigation Crisis: Is There A Need for an Administrative Alternative?*, 13 CARDOZO L. REV. 1819, 1849 (1992) ("A typical feature of plaintiffs' attorneys' asbestos case presentations is an appeal to local prejudice. Defendants are often out-of-state corporations while plaintiffs are often blue-collar workers.").

<sup>68</sup> See *Christ*, 866 N.W.2d at 605.

<sup>69</sup> See *id.* at 612.

<sup>70</sup> See *id.* at 623 (Roggensack, C.J., dissenting).

<sup>71</sup> See *id.* at 622–23.

<sup>72</sup> See *id.* at 606 (majority opinion).

<sup>73</sup> See *id.*

<sup>74</sup> See *id.*

<sup>75</sup> See *id.*

<sup>76</sup> See *id.* at 618 (Roggensack, C.J., dissenting).

about the tort committed must be introduced to win a wrongful death claim, and certainly much more needs to be known than the date of a death.<sup>77</sup>

Furthermore, Chief Justice Roggensack argued that Wisconsin precedent dictating that wrongful death and survival suits begin running upon the date of the death of the decedent should be followed.<sup>78</sup> This argument ignores that the creation of the discovery rule was a big enough occurrence that reliance on those cases demands explanation beyond the fact that they exist, which is all that Chief Justice Roggensack argued.<sup>79</sup>

In contrast, the majority correctly concluded that Wisconsin public policy dictates that meritorious claims should be heard when the marginal threat of stale claims is not overwhelming, which it certainly is not here.<sup>80</sup> The three existing barriers that the majority cites ensure that extension of the discovery rule to third-party representatives of decedents in wrongful death and survival suits will not open the floodgates for stale claims.<sup>81</sup> Instead, extension of the discovery rule to third-party representatives of decedents is the only rational way to allow all tort victims to be compensated for losses so that they can make themselves whole again.<sup>82</sup>

#### CONCLUSION

The Wisconsin Supreme Court held that the discovery rule, which exists to allow statutes of limitation in tort claims to be extended when the information necessary for the claims could not have been discovered during that period upon diligent effort, should be extended to wrongful death and survival suits brought by third-party representatives of decedents. The Wisconsin Supreme Court's extension of the discovery rule to third-party representatives of decedents in wrongful death and survival suits ensures that all tort victims can recover for damages suffered through no fault of their own. Though all tort victims benefit from this extension of the discovery rule, the families of underprivileged blue collar workers killed due to the negligence of large companies nevertheless especially benefit because they are disproportionately affected by the torts giving rise to wrongful death and survival claims. The Wisconsin Supreme Court, through *Christ v. Exxon Mobil Corp.*, has thus sent an important message to all Wisconsin employers, but especially to large-scale Wisconsin employers. Through *Christ v. Exxon Mobil Corp.*, the Wisconsin Supreme Court has unequivocally stated that employers cannot escape liability for their torts by reliance on a reading of

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<sup>77</sup> See *id.* at 616 (majority opinion).

<sup>78</sup> See *id.* at 618 (Roggensack, C.J., dissenting).

<sup>79</sup> See *id.* at 613 (majority opinion).

<sup>80</sup> See *id.* at 610.

<sup>81</sup> See *id.* at 615–16.

<sup>82</sup> See *id.*

the statute of limitations in wrongful death and survival suits whereby the knowledge of third-party representatives of decedents is irrelevant.