

[Products Liability Law Daily Wrap Up, STATUTES OF LIMITATIONS AND REPOSE—MEDICAL DEVICES—N.D. Cal.: Injured patient’s suit against maker of robotic surgical system time-barred under California law , \(Dec. 20, 2019\)](#)

Products Liability Law Daily Wrap Up

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By Donielle Tigay Stutland, J.D.

The hysterectomy patient could not rely on a tolling agreement to revive her untimely claims.

A federal district court in California granted Intuitive Surgical, Inc.’s motion for summary judgment in a products liability case involving the robotic “da Vinci” surgical system, as the suit was untimely. The patient had suffered an injury from a malfunction of the da Vinci system during a hysterectomy performed in Connecticut in 2012, and filed a products liability suit against Intuitive, the manufacturer of the device. The court concluded that California law applied and that the claims had not been filed within California’s two-year statute of limitations. In granting summary judgment for the defendant, the court noted that the doctrine of equitable estoppel did not apply, that a tolling agreement between the parties did not revive the untimely claims, and that neither the discovery rule nor the doctrine of fraudulent concealment would make the claims timely (*Rustico v. Intuitive Surgical, Inc.* , December 19, 2019, Koh, L.).

Background. The patient underwent a hysterectomy on January 12, 2012, in Connecticut. The surgeon used the da Vinci surgical system, which included a “monopolar curved scissors” instrument with a tip cover accessory. The tip cover accessory served as insulation that was designed to prevent electricity from escaping from the da Vinci surgical system and injuring patients. During the procedure in this case, the doctor performing the surgery noticed that the tip cover on the monopolar scissors malfunctioned and leaked electricity onto the patient’s atherosclerotic aorta, causing the patient to need an intervening surgery to repair the aorta, which was bleeding. The patient and her husband reported that the doctor noted that the cause of bleeding was due to a malfunction of the da Vinci device, and the doctor also prepared a report indicating this as well. Notwithstanding the surgical complication, the patient was released from the hospital four days later in good condition.

In September 2013, the patient witnessed a television commercial and chose to contact an attorney about a potential claim against Intuitive. In late July 2013, Intuitive proposed a tolling agreement to the patient’s attorneys. The attorneys returned an executed copy of the agreement to Intuitive on August 9, 2013.

Tolling agreement. The tolling agreement provided that it would toll the applicable statute of limitations starting on the date that Intuitive was provided with a claimant’s name. It also provided that if a claimant chose to file a lawsuit, any lawsuit should be filed in the Northern District of California. Further, the tolling agreement contained an express disclaimer: “The tolling of the applicable statute of limitations is not intended to and shall not for any purpose[] be deemed to limit or adversely affect any defense, other than a statute-of-limitations defense, that [Defendant] has, may have, or would have had in the absence of this agreement. Nor does this agreement waive or release any statute of limitations defense that could have been asserted before the date of the tolling period. Upon the completion of the tolling period, [Defendant] will have all defenses available to it as it had on the first day of the tolling period.” The parties extended the tolling agreement several times.

On April 13, 2018, the patient filed suit in the Northern District of California, claiming: (1) strict product liability as to a defect in construction; (2) strict product liability as to a defect in design; (3) strict product liability as to a defect in marketing; (4) negligence and negligence per se; (5) strict liability; (6) negligent misrepresentation and/or intentional misrepresentation; (7) fraud; and (8) loss of consortium. Intuitive filed a motion to dismiss arguing that the patient’s claims were untimely.

Discussion. The court granted Intuitive’s motion for summary judgment, noting several reasons. First, the court found that the two-year statute of limitations in California had expired as of January 2014. Additionally, the court found that the doctrine of equitable estoppel did not apply, that the tolling agreement did not revive the untimely claims, and that neither the discovery rule nor the doctrine of fraudulent concealment would make the claims timely.

The court concluded that California law, not Connecticut law, applied. Given that the defendant was located in California and the product was manufactured in California, and California was the forum state, the court found that California law governed, under the governmental interests approach. California has a two-year statute of limitations, and the court concluded that it expired as of 2014.

The court additionally found that the doctrine of equitable estoppel did not apply to the patient’s claims. The patient argued that she had relied on the tolling agreement to believe that her claims would not run afoul of the statute of limitations. The court noted that California law is clear that the “doctrine of equitable estoppel does not apply” when a defendant did not induce a delay in the filing of a complaint “until the limitations period provided by the applicable statutes of limitation had expired.” Moreover, the court noted that the tolling agreement contained a provision that made it clear that it did not waive or release any statute of limitations defense that could be asserted.

Finally, the court concluded that the patient would have been on notice of any claims as of the date of her surgery, so the discovery rule and the doctrine of fraudulent concealment would not apply.

The case is No. [18-CV-02213-LHK](#).

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Companies: Intuitive Surgical, Inc.

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