

IN THE SUPREME COURT OF OHIO

MICHAEL HODESH, : CASE NO.: 08-1133
Plaintiff-Appellant, : On Appeal from the Hamilton County
v. : Court of Appeals, First Appellate District
JOEL KORELITZ, M.D., et al., : Court of Appeals Case Nos. C-061013,
Defendant-Appellees. : C-061040, C-0700168, and C-0700172

MEMORANDUM OF APPELLEE, PROASSURANCE COMPNY, IN OPPOSITION
TO APPELLANT'S MEMORANDUM IN SUPPORT OF JURISDICTION

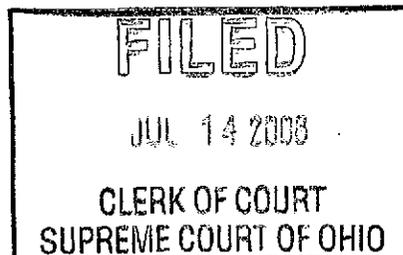
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I. STATEMENT OF APPELLEE'S POSITION REGARDING WHY THIS CASE IS NOT OF PUBLIC OR GREAT GENERAL INTEREST AND DOES NOT INVOLVE A SUBSTANTIAL CONSTITUTIONAL QUESTION

Appellee ProAssurance Company incorporates the arguments opposing jurisdiction on Hodesh's propositions of law set forth by Appellee Korelitz and does not restate them herein for the sake of brevity. As set forth in detail below, ProAssurance's interest in this appeal lies in the issue of prejudgment interest and, more specifically, which prejudgment interest statute applies to this case. Although not set forth as a "proposition of law," Appellant Hodesh has implicitly raised the issue by mentioning interest in at least two places in his memorandum in support of jurisdiction.

The prejudgment interest statute, R.C. 1343.03(C) was amended while Hodesh's case was pending before the trial court, but long before the jury verdict was entered and Hodesh moved for prejudgment interest. Hodesh asserted that the pre-amendment version applied to his case while ProAssurance argued the amended statute applied. Either way, this is not a case of public or great general interest since this specific issue can only apply to a handful of cases.

Specifically, the statute was amended on June 2, 2004. Thus, the issue as to which statute applies only arises if a cause of action accrued before that date but prejudgment interest did not become an issue until afterwards. Since the statutes of limitations on medical malpractice cases is one year and the statute of limitations on personal injury cases is two years, this issue cannot be germane but to a very small number of case. As such, it is not of public or general interest and this Court should decline to exercise jurisdiction over the case.

II. STATEMENT OF THE CASE AND FACTS

This is a medical malpractice case in which the jury found for the Plaintiff-Appellant, Michael Hodesh. See, Court of Appeals Opinion, ¶1. Hodesh then moved for prejudgment interest. *Id.*, ¶16. Appellee ProAssurance Company intervened in the case for purposes of the prejudgment interest proceedings. *Id.*

After a February 2007 hearing, the trial court granted Hodesh's motion and awarded prejudgment interest on the entire amount of the verdict. *Id.* In so doing, the trial court applied the version of R.C. 1343.03(C) in effect before the June 2, 2004 amendment. *Id.*, ¶60.

ProAssurance joined in Dr. Korelitz's appeal of the case to the First District Court of Appeals. Judges of the Second District Court of Appeals heard and decided the dispute. The Court of Appeals reversed the jury verdict based upon the fact that a Mary-Carter agreement existed between Hodesh and Defendant Jewish Hospital and was not disclosed to the jury. *Id.*, ¶42.

Despite the fact that the Court noted this rendered ProAssurance's challenge to the trial court's award of prejudgment interest moot, the Court went on to decide one of the prejudgment issues raised by ProAssurance. *Id.*, ¶¶49, 50. Specifically, the Court of Appeals held that the pre-amendment version of the statute applied to Hodesh's motion for prejudgment interest. *Id.*, ¶63. The Court also held that the amended statute could not be applied retroactively in this case. *Id.*, ¶65.

Hodesh then appealed to this Court, presenting two propositions of law in his Memorandum in Support of Jurisdiction. Neither proposition explicitly relates to prejudgment interest, which is where ProAssurance's interest in this appeal lies; however, at various points in his Memorandum, Hodesh asks that this Court to "reinstate the final judgment, with interest at

the proper rate” or “with interest calculated as according to law.” See, Memorandum in Support of Jurisdiction, pp. 2, 14.

ProAssurance agrees with and incorporates the arguments opposing jurisdiction on Hodesh’s propositions of law set forth by Appellee Korelitz. In the event this Court chooses to hear this appeal, however, ProAssurance reserves its right to participate in briefing on the issue of which prejudgment interest statute applies to this case.

III. CONCLUSION

For the reasons discussed above, this case does not involve matters of public or great general interest or a substantial constitutional question. The first proposition of law is irrelevant to the outcome of the case and the second proposition of law is unsubstantiated under Ohio law. Accordingly, ProAssurance Company respectfully requests that this Court deny jurisdiction.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served by ordinary U.S. mail upon the following this 14 day of July, 2008:

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