Seventh Circuit Court of Appeals upholds dismissal of claims against Indiana OB/GYN and affiliated health group as time-barred under the Federal Tort Claims Act and Discovery Rule:

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The Seventh Circuit Court of Appeals in *Woodson v. U.S.* recently upheld the Northern District of Indiana's summary judgment grant in favor of a federally-qualified health center ("FQHC") and one of its physicians based upon the Federal Tort Claims Act's ("FTCA") two-year statute of limitations.[i] The Court affirmed the District Court's dismissal and found that plaintiffs' medical negligence claims accrued the day the minor child was born, but that plaintiffs waited more than three years to file the instant action.

The significant facts are as follows.[ii] Dominque Woodson initially received prenatal care and treatment from an obstetrician, Dr. Keith Ramsey, at NorthShore Health Centers[iii] in May 2013. Dr. Ramsey advised Ms. Woodson that she would likely need to deliver by way of C-section due to her baby's large size. On December 7, 2013, Ms. Woodson went into labor. Despite the prior discussions about delivery, Dr. Ramsey performed a vaginal delivery of Ms. Woodson's minor child (P.W.). Per Ms. Woodson's own account, P.W.'s delivery was "traumatic," the child "got stuck on the way out" and had to be "yanked out with great force." **Ms. Woodson immediately noticed that something was wrong with P.W.'s left arm, as it sagged to his side and he was unable to move it**. Notably, Ms. Woodson addressed the above concerns with Dr. Ramsey, who advised that P.W.'s arm "may get better" and that he "may grow into it." However, P.W.'s condition was unchanged and Ms. Woodson subsequently consulted an attorney in May 2014. A proposed complaint was filed with the Indiana Department of Insurance in December 2014 generally alleging that Dr. Ramsey and the hospital where P.W. was delivered negligently provided prenatal and other obstetrical care. In December 2015, NorthShore's counsel informed plaintiffs' counsel that NorthShore was a federally-funded clinic and that Dr. Ramsey was a federal employee. As such, in February 2016, plaintiffs filed administrative tort claims with the U.S. Department of Health and Human Services, which were denied by the Department in April 2017. Plaintiffs then filed the instant action in October 2017, at which time the U.S. moved to dismiss the Complaint or, alternatively, for summary judgment on the basis that plaintiffs' claims were untimely and barred by the two-year statute of limitations set forth in the FTCA. The District Court agreed and determined that plaintiffs' claims accrued the day of P.W.'s birth, December 7, 2013.[iv]

On appeal, plaintiffs argued the claims against the U.S. did not accrue until May 2014, when they retained counsel.[v] The Seventh Circuit disagreed and held since plaintiffs presented their medical negligence claims to the Department of Health and Human Services in February 2016, any and all allegations needed to accrue **after February 2014** to be timely filed.[vi] The Court explained that two tests can be applied to determine when a claim accrues under the FTCA (also known as the "discovery rule"): (1) when the individual becomes **subjectively** aware of the government's involvement of the injury; or (2) when the individual acquires information prompting a **reasonable person** to inquire further into a potential injury caused by the government.[vii] "A plaintiff's claim

accrues the first time the plaintiff knew, or a reasonably diligent person in the plaintiff's position, reacting to any suspicious circumstances of which he or she might have been aware, would have discovered that an act or omission attributable to the government could have caused his or her injury."[viii]

In determining that plaintiffs' claims accrued on the day of P.W.'s birth, the Seventh Circuit specifically noted that a traumatic birth does not automatically trigger the FTCA's statute of limitations.[ix] Rather, the Court explained that there must be other circumstances, such as those in the case at bar, to trigger the statute of limitations prompting a person to investigate the potential cause of the injury.[x] The Court, distinguishing various cases where the injury was not apparent, determined that P.W.'s injury was "immediately evident" and that, as demonstrated by the above facts, plaintiffs were aware of same.

In addition to arguing that the action accrued in May 2014, plaintiffs also claimed that the Savings Clause of the Westfall Act made the filing timely and, alternatively, that equitable estoppel and equitable tolling applied.[xi] The Seventh Circuit found neither argument appealing. The Court held that the Indiana Department of Insurance never dismissed plaintiffs' claims, as required by the Savings Clause and, thus, it was inapplicable. Further, the Court determined that plaintiffs presented no evidence of equitable estoppel or equitable tolling. It ruled that neither Dr. Ramsey nor NorthShore had a duty to inform plaintiffs of their federal status and, significantly, reasoned that NorthShore's website disclosed same. Both of these findings defeated plaintiffs' alternative and unsubstantiated arguments.[xii]

Overall, the Court's holding reinforces the applicability of the "discovery rule" and its impact on filing lawsuits against federal healthcare providers under the FTCA. As established above, plaintiffs must file suit within two years of the claim's accrual, based upon their subjective or objective finding that an injury was potentially caused by the U.S. government (whichever happens first). Finally, federal healthcare providers, regardless of whether they are an individual or an entity, have no duty to inform potential claimants of their federal status, as long as same is not intentionally concealed.

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[i] See *P.W., a minor, by Dominque Woodson, his mother and guardian, et al. v. United of States of America*, No. 20-1142 (7th Cir. Mar. 5, 2021).
[ii] *Id.* at 2-5.
[iii] NorthShore Health Centers is a federally-funded health clinic in Northern Indiana and has no affiliation with NorthShore University HealthSystem. Since NorthShore is an FQHC, its employees (including Dr. Ramsey) are considered federal employees. Both the organization and its employees are protected against medical malpractice claims under the FTCA.
[iv] *Id.* at 5.
[v] *Id.* at 6.
[vi] *Id.*
[vii] *Id.* (emphasis added); see also *E.Y ex. rel Wallace v. U.S.*, 785 F.3d 861, 866 (7th Cir. 2014).
[viii] *Arroyo v. U.S.*, 656 F.3d 663, 667 (7th Cir. 2011).
[ix] *Id.* at 9.
[x] *Id.* at 10.
[xi] *Id.* at 12-15.
[xii] *Id.*; see also *Arteaga v. U.S.*, 711 F.3d 828 (7th Cir. 2013).