

Refile, Repeat: Ohio's Savings Statute Allows for Unlimited Bites of a Time-Barred Claim

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The Ohio Supreme Court recently [decided](#) once and for all a question that has vexed lower courts and parties for years: namely, how many times can a party use the savings statute to proceed with a time-barred claim?

The court found that by its plain terms, **there is no limitation on how often a plaintiff can use the savings statute to refile an action**, even if one of the claims had become time-barred in the meantime.

What is a Savings Statute?

A savings statute gives a plaintiff a second chance to refile a lawsuit that was previously dismissed for a technical or procedural reason. It applies when the case ended without a court deciding who was right, even if the normal deadline for suing has already passed.

Ohio has a savings statute: R.C. § 2305.19(A). That statute says, in relevant part, that when an **action** has been commenced or attempted to be commenced and then fails other than upon the merits, “the plaintiff . . . may commence a new **action** within one year after the date of . . . the plaintiff’s failure otherwise than upon the merits or within the period of the original applicable statute of limitations, whichever occurs later.”

So What is the Issue?

For years, Ohio courts have grappled with whether the savings statute applies on a per-claim basis or to an action as a whole. For instance, in the underlying case, the Ohio Eighth Appellate District went through each of the plaintiff’s claims to determine whether the statute of limitations on a given claim had expired before the subsequent lawsuit was recommenced, finding that some claims had expired before the use of the savings statute, whereas others had not.

This contrasted with the holdings of other Ohio courts, which found that the savings statute applies on a per-action, not per-claim, basis. See *McGowan v. Family Medicine, Inc.*, 2002-Ohio-4071 (5th Dist.).

Because of this conflict, the Eighth Appellate District certified the following question to the Ohio Supreme Court:

Does the saving statute, R.C. 2305.19(A), apply to save a refiled “action” as a whole, or does it apply to save refiled “claims” independently?

The Ohio Supreme Court accepted the certified question.

What Did the Court Say?

A majority of the court found that the plain language of the savings statute, as well as its precedent, makes clear that a party can use the savings statute an unlimited number of times on a per-action basis.

As the court noted in a prior case, *McCullough v. Bennett*, 2024-Ohio-2783, it found that there is no single-use restriction on the savings statute based on the plain text of the statute. In this case, the court found that both the Eighth Appellate District and the parties misread its *McCullough* decision for the proposition that there is no one-use restriction as applying “only to claims for which the statute of limitations had not expired before the second filing.

In other words, they read *McCullough* as continuing to allow for a judicially created one-use restriction for claims on which the statute of limitations had expired at the time of the second filing.”

The court rejected this reading of its precedent as well as the text of the savings statute itself. As the court noted, the savings statute applies to an “action,” not a “claim.” Additionally, an “action” is considered the judicial proceeding, “not each individual claim asserted within the complaint initiating the proceeding.” Thus:

[n]othing in the saving statute provides that it may be used only once. And nothing in the saving statute provides that it applies only when a second filing of an action occurred within the original statute-of-limitations period. Rather, once an action has been timely commenced, R.C. 2305.19(A) does not limit the number of times a new action may be commenced in accordance with the statute’s terms.

So What Does this Ruling Mean?

Now in Ohio, a litigant can use the savings statute to extend the statute of limitations through unlimited dismissals and refilings. Indeed, the Ohio Supreme Court readily acknowledged this concern but advised that it was the Legislature’s job to remedy this issue. Absent a legislative fix, there are a few things for defendants to consider:

- **Statute of limitation defenses are not dead.** But you will need to track them with precision and ensure that the first action was filed in a timely manner. If not, then the savings statute does not apply to subsequent

actions.

- **Leverage the dismissal rules (Civ. R. 41).** Try to ask for a dismissal on the merits (i.e., with prejudice) when, and where possible.
- **Sanctions may be warranted.** Ohio law provides for sanctions against parties engaged in vexatious conduct. Consider whether multiple dismissals and then refilings can constitute vexatious conduct in a given case.

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