

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Senior District Judge Richard P. Matsch

Civil Action No. 11-cv-00767-RPM

DR. GEORGE FREY, M.D.,  
a Colorado Citizen,

Plaintiff,

v.

WARSAW ORTHOPEDIC, INC.,  
an Indiana corporation, and  
MEDTRONIC SOFAMOR DANEK USA, INC.,  
a Tennessee corporation,

Defendants.

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ORDER ON CHOICE OF LAW  
STATUTE OF LIMITATIONS

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The plaintiff claims breaches of two contracts; the Boomerang Agreement and the Pyramesh Agreement. Those documents provide, respectively, that they are to be construed and interpreted for all purposes according to the law of Tennessee and Indiana. Both Tennessee and Indiana have a 6-year limitations period.

The defendants have raised the affirmative defense of the statute of limitations under Colorado law, C.R.S. § 13-80-101 (three years). In asserting that contention they argue that the choice of law provisions in the contracts should be narrowly construed to issues of contract interpretation and that Colorado has the most significant relationship to this case.

These arguments are rejected. Contract interpretation is a critical question in this case.

These contracts are separate. C.R.S. § 13-82-104(1)(a) provides that if a claim is substantively based upon the law of one other state, the limitation period of that state applies. The defendants argue that subsection 104(1)(b) applies because the plaintiff's claims involve the law of more than one state and the conflict laws of Colorado should be used to determine the limitation period. That argument is rejected. It also misreads the statute which requires application of the law of one of the states.

The defendants seek a ruling on when the plaintiff's claims accrued. That question depends upon disputed facts and must be determined at trial.

Accordingly, it is

ORDERED that the plaintiff's claims under the Boomerang Agreement are subject to the 6-year statute of limitations under Tennessee law, and the plaintiff's claims under the Pyramesh Agreement are subject to the 6-year statute of limitations under Indiana law.

Date: July 30, 2014

BY THE COURT:

s/Richard P. Matsch

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Richard P. Matsch, Senior District Judge