

Not Reported in F.Supp., 1995 WL 871210 (E.D.Mich.)  
(Cite as: **1995 WL 871210 (E.D.Mich.)**)

Only the Westlaw citation is currently available.

United States District Court, E.D. Michigan.  
Derek MARSH, Plaintiff,  
v.  
DOMINO'S PIZZA, INC., and/or Domino's Pizza of  
Canada, Ltd., Defendants.

No. 95-72618.  
Nov. 7, 1995.

[Dennis M. O'Bryan](#), O'Bryan Baun, Birmingham, MI,  
for plaintiff.

[Wayne L. Ogne](#), [Michael A. Ross](#), Ogne, Alberts,  
Troy, MI, for defendant.

OPINION AND ORDER GRANTING DEFEND-  
ANTS' MOTION TO DISMISS

[EDMUNDS](#), District Judge.

\*1 This matter came before the court upon Defendants' motion to dismiss. Plaintiff, Derek Marsh, brought this action in negligence to recover for personal injuries he suffered as a result of an auto accident that took place in Alberta, Canada. Marsh, a citizen of Canada, was in an accident with a Domino's delivery vehicle. Defendants have moved to dismiss based on the statute of limitations. For the reasons stated below, the motion is granted.

Pursuant to Local Rule 7.1 for the Eastern District of Michigan, "[a] respondent opposing a motion shall file a response, including a brief and such supporting documents as are then available, within 10 days after service of the Motion." E.D.Mich.L.R. 7.1(a). Defendants filed their motion on August 9, 1995. Plaintiff failed to file a response within ten days after this date. On October 17, 1995, the court issued an order to show cause why the motion should not be granted.

Plaintiff still failed to file a response. Since the motion is unopposed, this court could grant the motion. Moreover, the motion to dismiss is well-founded.

Under the Michigan borrowing statute, where a cause of action accrues outside the state, the cause of action is barred if either the statute of limitations of Michigan or of the place where the claim accrued has run. [Mich.Comp.Laws Ann. § 600.5861](#). The claim accrues when and where the injury and damage are suffered. [Parish v. B.F. Goodrich Co.](#), 395 Mich. 271, 275, 235 N.W.2d 570 (1975); [Szlinis v. Molded Fiberglass Co.](#), 80 Mich.App. 55, 60, 263 N.W.2d 282 (1977). In this case, the cause of action accrued in Alberta, Canada where the car accident took place.

Under Alberta law, the statute of limitations for a personal injury or negligence claim is two years. Alberta Limitations of Actions Act, Chap. L-15, Pt. 9, §§ 51(b) & 52 (Defendants' motion, Exhibit A). The car accident occurred on June 29, 1992. Thus, the statute of limitations expired two years later on June 29, 1994. However, Plaintiff failed to file this suit until June 28, 1995. Accordingly, Plaintiff's suit is time-barred.

For the reasons set forth above, Defendants' motion to dismiss is GRANTED and Plaintiff's claim is DISMISSED.

*JUDGMENT*

The Court having reviewed the pleadings in this matter and being fully advised in the premises;

IT IS HEREBY ORDERED AND ADJUDGED that Defendants' motion to dismiss is GRANTED, and Plaintiff's claim is DISMISSED.

SO ORDERED.

Not Reported in F.Supp., 1995 WL 871210 (E.D.Mich.)  
(Cite as: **1995 WL 871210 (E.D.Mich.)**)

E.D.Mich.,1995.

Marsh v. Domino's Pizza, Inc.

Not Reported in F.Supp., 1995 WL 871210  
(E.D.Mich.)

END OF DOCUMENT