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Illinois Court Declines to Adopt "Continuous Course of Treatment Doctrine" in Accountant Malpractice Claims

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Maniscalco v. Porte Brown LLC, 2018 IL App (1st) 180716 (11/30/18)

Brief Summary

Illinois' First District Appellate Court held that the five-year statute of repose and two-year statute of limitations governing claims against accountants barred plaintiffs' malpractice claims against their longtime accountant and tax advisor. The court also held that the continuous course of treatment doctrine did not apply to the plaintiffs' accounting malpractice claims.

Complete Summary

On August 21, 2017, plaintiffs filed accounting malpractice claims against defendants—their longtime accountants—dating back to at least 1994. Plaintiffs alleged that defendants provided advice and services in 2009 and years prior regarding tax schemes that increased the risk that the owners could lose corporate protection for their alleged conduct. Another company (Steiner Electric) sued one of plaintiffs' companies in 2009. Due in part to defendants' advice, Steiner Electric obtained a default judgment against plaintiffs' company, which at that time was out of business and had no assets. According to plaintiffs, the default judgment allowed Steiner Electric to sue plaintiffs in 2010, which resulted in Steiner Electric piercing the corporate veil and obtaining a judgment against plaintiffs—jointly and severally—causing damages in excess of \$421,000.

The trial court granted defendants' motion to dismiss, finding plaintiffs' claims were time-barred under both the two-year statute of limitations and the five-year statute of repose (735 ILCS 5/13-214.2(a)-(b)). The appellate court affirmed. In applying the statute of repose, the court found all the alleged wrongful acts took place well before August 2012, *i.e.*, five years before the complaint was filed. The court declined to find a discovery rule exception applied to the repose period under the Illinois Public Accountant Statute, which provides that the date of the wrongful act triggers the start of the repose period. The court also held that the continuous course of treatment doctrine is inapplicable to accounting malpractice actions, even where, as here, the relationship continues beyond the purportedly tortious act or omission. Citing a lack of precedent in Illinois courts concerning whether the "continuous course of treatment doctrine" is applicable

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to actions sounding in accounting malpractice, the court found guidance from Illinois courts' decisions which have consistently rejected the doctrine in legal malpractice actions to extend the six-year repose period (735 ILCS 5/13-214.3).

Significantly, in relation to the two-year statute of limitations, the court relied on a letter sent by plaintiffs' attorney in April 2013, which notified defendants that plaintiffs may have a malpractice action against defendants arising from defendants' conduct leading to the judgment in favor of Steiner Electric. Plaintiffs had independent counsel and the letter showed plaintiffs were on notice they "may" have a malpractice claim against defendants. Citing the letter and other facts, the court held plaintiffs' August 2017 complaint was filed well beyond the limitations period requiring suits to be "commenced within 2 years from the time the person bringing an action knew or should reasonably have known of such act or omission."

Significance of Decision

Significantly, this case reiterates the longstanding policy of Illinois courts not to read any exceptions into clearly defined statutes concerning time limitations for professional malpractice claims. In particular, Illinois courts have consistently rejected the continuous course of treatment doctrine to toll the statutes of repose and limitations in malpractice actions. See, e.g., *Witt v. Jones & Jones Law Office, P.C.*, 269 Ill.App.3d 540 (1995).

For more information, please contact Terrence P. McAvoy or Michael G. Ruff