



Alerts

Professional Lines Alert

August 27, 2010

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- Auditor
- Architect
- Insurance Agent/Broker
- Real Estate Agent

Auditor

Grant Thornton LLP v. Prospect High Income Fund, 2010 WL 2636124 (2010)

The Texas Supreme Court held that Texas law does not impose a duty upon auditors to provide an accurate accounting to persons or entities other than the client and those persons or entities the accountant knew to be an investor. It also held that "holder" claims based upon an investor's decision to hold rather than sell securities do not state a cause of action absent a direct communication between the auditor and the "holder."

Architect

Reyes-Dawson v. Goddu, 74 A.D.3d 417, 905 N.Y.S.2d 145 (2010)

In a summary opinion, the Appellate Division of the Supreme Court of New York recognized that an architect could be sued for general negligence if the legal theory was not based upon a breach of professional services and the defendant just happened to be an architect. Thus, the court determined that the professional negligence statute of limitations did not apply. The court found that the complaint was barred by the statute of limitations under any theory.

Sharp Engineering v. Luis, 2010 WL 3153982 (2010)

The Texas Court of Appeals determined that the required "certificate of merit" must be filed with the first pleading against an architect. Plaintiff had failed to file a certificate and a motion to dismiss was filed. The certificate was filed with a first amended pleading. Because the certificate was not filed with the first-filed complaint, the action was dismissed.

Ted Jacob Engineering Group, Inc. v. The Ratcliff Architects, 2010 WL 3294341 (2010)

Architects subcontracted out mechanical and electrical engineering services to be performed relating to a hospital renovation. The scope of the project increased and the engineering group sought additional payment for the

Attorneys

Marissa I. Delinks

Service Areas

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additional services provided. The architects agreed to pay some, but not all, of the additional fees. The California Court of Appeal held that, in the absence of a negotiated agreement upon price, and assuming no contrary contractual provision applies, a subcontractor may seek a judicial determination of additional fees for work demanded by the general contractor that constituted a material change in the scope of work defined under the contract. Further, it held that if good faith negotiation between the parties fails to result in agreement on price, the subcontractor is not required to elect between abandoning the job and forfeiting its right of recovery if it elects to perform the required work. The appellate court affirmed the award to the engineering group for its fees of \$1,080,698, prejudgment interest of \$1,278,675 and attorneys' fees of \$2,253,411.97.

Insurance Agent/Broker

Monroe v. Cogswell Agency and Safeco Insurance Company, 356 Mont. 417, 234 P.3d 79 (2010)

The Montana Supreme Court determined that an insurance professional acts as a "broker" while shopping for insurance and determining the carrier with which the insurance should be placed. Once the insurer is chosen, the "broker" becomes an "agent" for the insurer. The Court recognized that a broker owes an absolute duty to obtain the insurance coverage that the applicant directs the broker to obtain. It also concluded that a "broker" does not owe a duty of care to advise clients of their coverage needs. Summary judgment in favor of the broker was overruled based upon a question of fact and the broker's failure to prove that the claimed coverage had not been requested.

Hartford Cas. Ins. Co. v. Moore, 2010 WL 3169517 (2010)

Hartford filed a Declaratory Relief/Judgment action seeking a judicial determination that it owed no obligation to the insured law firm because the acts complained of occurred prior to the retroactive date, the firm knew of the potential claim prior to the inception of the Hartford policy and because the firm failed to disclose the potential claim on the application for insurance. The law firm filed a cross-claim against its insurance broker alleging negligence in failing to obtain a retroactive date that preceded the particular claim. The insurance broker challenged the joinder. The U.S. District Court for the Central District of Illinois found the negligence claim against the insurance broker to be sufficiently related to the insurance coverage action for both jurisdictional and pleading purposes.

Real Estate Agent

Setliff v. Slayter, 38 So. 3d 1230 (2010)

Defendant signed a listing agreement with plaintiffs Elaine Setliff and Louisiana Lagniappe Realty, LLC (LLR) for the sale of defendant's home in Louisiana. The relationship deteriorated and defendant posted a sign on his property that read: "In My Opinion LOUISIANA LAGNIAPPE REALTY IS THE WORST REALTOR I'VE EVER DEALT WITH." The sign included the LLR trademark. Plaintiffs sued for an injunction precluding use of the trademark, breach of contract and defamation. The trial court granted the injunction, awarded the commission that would have been earned absent breach of contract and denied any damages for defamation. The appellate court affirmed

United Real Estate & Property Management, Inc. v. Unknown, 905 N.Y.S.2d 487 (2010)

Plaintiff real estate company sued for its broker's commission contending that the company was the procuring cause of the sale of defendant's property. Plaintiff, through its agent, had found a buyer for the property, but the contract of sale was not signed until after the listing agreement had expired. The listing agreement did not contain the typical clause that the seller was obligated to pay the commission if the property sold within a stated time to someone to whom the broker had shown the house. The Civil Court of the City of New York stated that the sales agent acted in bad faith in retaining the full commission, but that the real estate company could not collect from the seller because the contract was not ambiguous and would be limited to its express terms. Contracts should be examined to make sure that the right to be paid for one's efforts is preserved.

For further information, please contact Joseph J. De Hope, [Marissa I. Delinks](#) or your regular [Hinshaw attorney](#).



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