



## Alerts

### Statutes of Repose Do Not Shorten Bankruptcy Trustee's Period to Pursue Legal Malpractice

February 23, 2010

*Lawyers for the Profession® Alert*

*Stanley v. Trincharde*, 579 F.3d 515, 51 Bankr. Ct. Dec. 278 (5th Cir. 2009)

#### Brief Summary

Bankruptcy trustees who wish to pursue causes of action on behalf of debtors' estates are not governed by a state's shorter statute of repose, but rather by the federal bankruptcy law's two-year period.

#### Complete Summary

Bankruptcy trustee Stanley ("Trustee") brought a legal malpractice claim on behalf of a bankruptcy debtor's estate against law firm Trincharde & Trincharde LLC 13 months after the debtor knew or should have known of his legal injury. The district court granted Trincharde & Trincharde's summary judgment because the Trustee's claim was barred by Louisiana's one-year preemptive period, which is the civil law equivalent of a statute of repose in a common law jurisdiction.

Bankruptcy Code § 108(a) allows a trustee to commence an action on behalf of a debtor's estate within the period allowed by state law for such an action, or within two years after the order for relief, whichever is later. Louisiana law allows a party to bring an action for legal malpractice under two statutes, a statute of limitations and a period of preemption. The former is a period in which an action may be commenced, while the latter represents the lifespan of a substantive right. On the Trustee's appeal, the question before the Court was whether Louisiana's one-year preemptive statute was exempt from Bankruptcy Code § 108 because of its status as a statute of repose.

Trustee argued that the time period established under Bankruptcy Code § 108 (a) preempted all time period limitations under state law, not just statutes of limitation. Trincharde & Trincharde, however, argued that Bankruptcy Code § 108 (a) was limited to statutes of limitations; otherwise, the Bankruptcy Code would impermissibly resurrect substantive rights otherwise extinguished by state law.

The Fifth Circuit agreed with Trustee and reversed. The Court noted the purpose of the Code is to afford trustees extra time to assess and pursue the estate's assets. Furthermore, Congress drew no distinction between the state periods of limitation and repose governing time limits for filing suit. Thus, the Fifth Circuit held that Bankruptcy Code § 108(a) extends Louisiana's legal

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malpractice peremption period.

**Significance of Opinion**

This opinion addresses a matter of first impression on appeal, and lawyers and insurers in matters with statutes of repose that would expire during the two-year bankruptcy limitations period should take note of the holding. Although statutes of repose, such as Louisiana’s peremptory period, are generally not subject to extension, this opinion creates a substantial exception to that rule.

*This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.*