



## Alerts

### Illinois' Statute of Repose Is Not Limited to Claims Asserted By Client

February 26, 2014

*Lawyers for the Profession® Alert*

*Evanston Insurance Company v. Riseborough, 2014 IL 114271*

#### Brief Summary

The Illinois Supreme Court held that the statute of repose governing claims against attorneys (735 ILCS 5/13.214) is not limited to claims asserted by a client, but also applies to claims asserted by non-clients.

#### Complete Summary

At issue in this appeal was whether Section 13-214.3 of the Illinois Code of Civil Procedure (735 ILCS 5/13-214.3), which sets forth a six-year statute of repose for "action[s] for damages based on tort, contract, or otherwise ... against an attorney arising out of an act or omission in the performance of professional services," applied to plaintiff's second amended complaint for breach of implied warranty of authority, fraudulent misrepresentation, and negligent misrepresentation. The trial court found that the statute of repose barred plaintiff's claims against the defendant attorneys and dismissed the complaint. The appellate court reversed, however, and remanded for further proceedings, finding that the statute of repose did not apply to an action brought by a non-client of the defendant for a cause of action other than legal malpractice. The Illinois Supreme Court reversed and affirmed the trial court's dismissal of plaintiff's complaint.

In 1996, Construction Corporation (the Corporation) was the general contractor for the construction of a warehouse. Two employees of a subcontractor were injured, resulting in a personal injury action filed against the Corporation by one of the workers. The Corporation was represented by the defendant law firm. At the time of the accident, the Corporation was the named insured under a number of insurance policies. In 1997, one of the insurers filed a declaratory judgment action seeking a declaration that it owed no coverage. That action was pending in 2000 when the parties reached a settlement of the personal injury case in the amount \$4,887,500. On October 23, 2000, the insurers entered into an agreement, referred to by the parties as the "Fund and Fight Agreement." The defendant attorney signed the agreement as the "duly authorized agent and representative of [the Corporation]."

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In summary, on December 22, 2003, the Corporation's president filed an affidavit stating that he had no knowledge of the "Fund and Fight Agreement" at the time of its creation, and that the attorney lacked authorization to sign the agreement on the Corporation's behalf. On April 29, 2009, the trial court granted the Corporation's motion for summary judgment, in part, finding that the Corporation did not give authority to the defendant attorney to sign the "Fund and Fight Agreement" on its behalf. On December 2, 2009, the trial court entered judgment in favor of the Corporation and against the insurer.

While the insurance coverage proceedings were still pending, on December 2, 2005, the insurer filed a complaint against the defendant attorneys and their firm. The insurer alleged breach of implied warranty of authority, fraudulent misrepresentation, and negligent misrepresentation, based on defendants' execution the "Fund and Fight Agreement" on the Corporation's behalf without the Corporation's express authority. The insurer alleged that defendants' actions caused it to lose the anticipated benefits of the agreement and sustain damages. The insurer later filed an amended complaint setting forth substantially the same allegations. The trial court dismissed the insurer's complaint without prejudice as premature (because the declaratory judgment action was still pending).

On December 23, 2009, after the final judgment order had been entered in the coverage action, the insurer filed its second amended complaint reasserting its claims. The trial court granted defendants' motion to dismiss, finding the six-year statute of repose in Section 13-214.3(c) barred the insurer's claims. The appellate court reversed and remanded for further proceedings. The Illinois Supreme Court allowed defendants' petition for leave to appeal.

The statute of repose at issue is contained in Section 13-214.3 of the Code, which is titled "Attorneys." Section 13-214.3 provides, in part:

- (b) An action for damages based on tort, contract, or otherwise (i) against an attorney arising out of an act or omission in the performance of professional services ... must be commenced within 2 years from the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought.
- (c) An action described in subsection (b) may not be commenced in any event more than 6 years after the date on which the act or omission occurred.

The Illinois Supreme Court held that the appellate court's conclusion that Section 13-214.3 applies only to a claim asserted by a client of the attorney is contrary to the plain language expressed in the statute. There is nothing in Section 13-214.3 that requires the plaintiff to be a client of the attorney who rendered the professional services. The statute does not refer to a "client," nor does it place any restrictions on who may bring an action against an attorney. The statute simply provides that an action for damages against an attorney "arising out of an act or omission in the performance of professional services" is subject to the six-year repose period. Thus, the court held that under the express language of the statute, it is the nature of the act or omission, rather than the identity of the plaintiff, that determines whether the statute of repose applies to a claim brought against an attorney. The court affirmed the dismissal of plaintiff's alleged claims on the basis that they were time-barred by the statute of repose.

### **Significance of Opinion**

This decision is significant because the Illinois Supreme Court held that that the statute of repose governing claims against attorneys is not limited to claims asserted by a client, but also applies to claims asserted by non-clients. The court specifically rejected the conclusion of other Illinois appellate courts and federal district courts which limited the statute of repose to claims of clients for legal malpractice.

For more information, please contact [Terrence P. McAvoy](#).

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