HINSHAW

Newsletters

The Professional Line - December 2012

December 17, 2012

Download or read the complete newsletter here: *The Professional Line* - December 2012

The Engineer's Naming of Owner as Additional Insured Not Blocked by Professional Services Exclusion

Patrick Engineering, Inc. v. Old Republic Gen.l Ins. Co., 2012 IL App (2d) 111111 (July 20, 2012)

By: Kevin Sido

Owners/clients often ask their architect/engineering (A/E) firms, like contractors, to add the client as additional insureds to the A/E firm's general liability (GL) policy. Those GL policies invariably have a "professional acts" or professional-services exclusion. If the additional insured tenders its defense but the carrier disclaims, the A/E firm can face a breach of contract action for failing to procure the requisite coverage. If the additional insured is successful on that failure to procure claim, the damages may encompass the defense and indemnity amounts paid by the putative additional insured as a breach.

Recent Court Rulings—Case Summaries & Conclusions

Accountants: Accountant's Legal and Ethical Advice Does Not Result in Damages, Since the Measure of Damages Is Based Upon Properly Filed Taxes

RTR Technologies, Inc. v. Helming, 815 F. Supp. 2d 411 (D. Mass. 2011)

Attorneys

Bradley M. Zamczyk

Service Areas

Appellate

Directors & Officers Liability

The U.S. District Court for the District of Massachusetts recently found that defendant accountant's advice, although resulting in tax liability, did not cause damages because plaintiff owner's (the owner's) purported loans to herself from a second plaintiff, her Subchapter S corporation (the corporation), were actually properly categorized as income and thus subject to income taxes. The court also held that Massachusetts' three-year statute of limitations applicable to professional malpractice claims governed this case based upon the "essential nature" of plaintiffs' claims. See Mass. Gen. Laws ch. 260, § 4.

For more information, please contact Bradley M. Zamczyk or your regular Hinshaw attorney.

Accountants: Delayed Discovery Rule Not Applicable to Toll Statute of Limitations Where Officer of Company Knew of Facts Suggesting Potential Negligence
Robert Czajkowski v. Haskell & White, LLP, No. D059090, 2012 WL 2914289 (Cal. Ct. App.July 18, 2012)

The California Court of Appeal, Fourth District, issued an opinion limiting the conditions under which the statute of limitations for malpractice causes of actions brought against accounting firms may be tolled. The court held that Cal. Code Civ. Proc. § 339, subd. 1, which imposes a two-year limitation period for "[a]n action upon a contract, obligation or liability not founded upon an instrument of writing . . . [,]" is tolled only until facts sufficient to arouse the suspicions of a reasonable person come to a plaintiff's attention.

For more information, please contact Bradley M. Zamczyk or your regular Hinshaw attorney.

Engineers: Colorado Economic Loss Rule Bars Lender's Tort Action Against an Engineer That Issued a Report As to the Viability of a Coal Mine to Another Lender

Standard Bank, PLC v. Runge, Inc., 443 Fed. Appx. 347 (10th Cir. 2011)

The U.S. Court of Appeals for the Tenth Circuit issued an opinion holding that defendant engineering firm had no duty to plaintiff bank independent of its contract to provide an accurate evaluation of a coal mine, which ultimately failed. *Citing BRW, Inc. v. Duffi cy & Sons, Inc.,* 99 P.3d 66 (Colo. 2004), the Tenth Circuit determined that the economic loss rule barred the bank's tort claims based on the interrelated contracts of the commercially sophisticated parties contractually allocating risk.

For more information, please contact Bradley M. Zamczyk or your regular Hinshaw attorney.

Download or read the complete newsletter here: *The Professional Line* - December 2012

This newsletter 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.