



## Newsletters

### Lawyers' Professional Liability Update - February 2011

February 25, 2011

#### Statute of Limitations

##### **Dismissal of Claim Based on Statute of Repose Improper Because Plaintiff Did Not Suffer Injury Until Husband Died**

*Snyder v. Heidelberg*, 403 Ill. App. 3d 974, 933 N.E.2d 1235 (2d Dist. 2010)

Plaintiff surviving wife sued an attorney for malpractice in drafting a deed to real property that the surviving wife's late husband allegedly intended to convey to her as his joint tenant. Two months after the husband's death, the surviving wife's stepson filed a forcible entry and detainer action against the surviving wife. A judgment was entered for the stepson on the basis that the decedent had previously amended the land trust, which (rather than the decedent) actually owned the property and which provided that upon the decedent's death, the entire beneficial interest would go to the stepson. The surviving wife alleged that she was a third-party beneficiary of the professional relationship between the decedent and the lawyer. Dismissal of the claim on the basis of the six-year statute of repose (735 ILCS 5/13-214.3) was improper because the surviving wife suffered no actual injury until her husband died. The husband could have, at any time before his death, remedied the attorney's error by drafting a deed or other conveyance that effectuated his intent. The surviving wife timely filed suit within two years after her late husband's death.

#### Fee Agreements / Fees

##### **Eighth Circuit Invalidates Fee-Splitting Agreement Based on Technical Violations of Ethical Rule**

*Eng v. Cummings, McClorey, Davis & Acho PLC*, 611 F.3d 428 (8th Cir. 2010)

In summary, the U.S. Court of Appeals for the Eighth Circuit held that a fee-splitting arrangement between law firms was unenforceable because the client did not agree to the arrangement in writing and because the agreement did not indicate that the firms would be jointly responsible for the matter.

#### Privilege

##### **No Privilege for In-House Counsel Communications in Europe's High Court**

#### Service Areas

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*Akzo Nobel Chemicals and Akcros Chemicals v. Commission*, Case No. C-550/07 P (2010)

In summary, the European Union's high court, the Court of Justice, held that a corporate client's communications with its in-house attorneys were not privileged because such lawyers are not independent from their clients. The Court of Justice addressed the issue of whether the legal professional privilege (LPP)—Europe's version of the attorney-client privilege—applied to communications with in-house counsel. The LPP protects lawyer-client communications which involve an attorney who is independent from the client. The independence requirement is designed to ensure that the lawyer's role in collaborating in the administration of justice is not overridden by the attorney's role in advancing the client's interests.

## **Privilege**

### **Ohio Supreme Court Recognizes Self-Protection Exception to Attorney-Client Privilege**

*Squire, Sanders & Dempsey, L.L.P. v. Givaudan Flavors Corp.*, 127 Ohio St. 3d 161, 937 N.E.2d 533 (2010)

In summary, the Ohio Supreme Court held that exceptions exist to both the attorney-client privilege and work product protection when the attorney-client relationship has been put at issue by a claim for legal fees or a claim that the attorney breached a duty owed to a client.

## **Miscellaneous**

### **New York High Court Declines to Broaden Liability of Third-Party Professionals for Client Fraud**

*Kirschner v. KPMG LLP*, \_\_\_ N.E.2d \_\_\_, 2010 WL 4116609 (N.Y. 2010)

In summary, under New York law, the fraud of corporate insiders will be imputed to the corporate entity regardless of the insiders' intent or the degree to which the corporation benefited from the fraud. There is a limited exception to this rule when the fraud is against the corporation itself. In cases where fraud is imputed, the corporation is barred by the doctrine of *in pari delicto* from shifting responsibility for the fraud to third-party agents such as law firms or accounting firms.

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