

Michigan legislature restores applicable limitations period against design professionals, contractors

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Following passage in both houses of the Michigan Legislature, Senate Bill No. 77 was signed into law by Governor Rick Snyder on Oct. 4. This action by the state Legislature restores the applicable limitations periods against design professionals and contractors to two years and three years, respectively, and overrules the Michigan Supreme Court decision in *Ostroth v Warren Regency*, 474 Mich 33 (2006).

By way of background, the *Ostroth* decision—whether inadvertently or purposefully—instantly abrogated decades of law and ignored long established rules relative to the statute of limitations and the statute of repose periods for design professionals and contractors. The *Ostroth* ruling also segregated the construction industry from general limitations law, and in fact, lengthened all applicable limitations periods specific to the state's design and construction industry.

Ostroth stood for the proposition that Michigan Compiled Law (MCL) 600.5839 acted not only as a statute of repose (its intended purpose) but also as a statute of limitations against design professionals and contractors. This, in turn, lengthened the applicable limitations period from two years for design professionals and three years for contractors to six years for both.

Industry participants were left asking: "What is the difference between a limitations period and a repose period, and when does each commence?" A limitations period is said to start running at the time *a claim accrues*. In the case of damage to person or property, a claim accrues at the time that the wrong upon which the claim is based was done, regardless of the time when the damage results. Stated differently, a claim accrues on the day which an event (such as an injury) that triggers liability is discovered (or should have been discovered).

A statute of repose, on the other hand, begins to run based upon a specified event. In the case of an action involving the construction industry, that specified event is the occupancy, use or acceptance of the improvement to real property, as provided in MCL 600.5839.

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The Supreme Court's ruling in *Ostroth* eliminated the rule that the statute of limitations period began to run when a *claim accrues*. Instead, the *Ostroth* court ruled that all actions, whether brought against design professionals or contractors, commenced upon the time of occupancy of the completed improvement, use or acceptance of the improvement to real property (as written in the MCL 600.5839 – originally intended as a statute of repose).

The new Senate Bill No. 77 effectively returns the limitations periods to those called for in the MCL 600.5805, which is Michigan's statute pertaining to injuries to persons or property. Specifically, subsection (14) has been changed to clarify the period of limitations for an action against a state licensed architect, professional engineer, land surveyor or contractor based on an improvement to real property.

Effective Jan. 1, 2012, an action against a state licensed architect or professional engineer or licensed professional surveyor arising from professional services rendered is *an action charging malpractice* subject to the period of limitation contained in MCL 600.5805 subsection (6). Subsection (6) states that the period of limitations is two years for an action charging malpractice. Therefore, all actions against state licensed architects or professional engineers or licensed surveyors must be brought within two years of the accrual of the action.

Relative to contractors, MCL 600.5805 subsection (10) now reads that except as otherwise provided in this section, the period of limitations is three years after the time of the death or injury for all actions to recover damages for the death of a person or for injury to a person or property. Accordingly, any action against a contractor for injury due to alleged negligent acts has been restored to three years.

Now that the statute of limitations has been returned to two years for design professionals and three years for contractors, it follows logically that the statute of repose for design professionals and contractors shall hold steadfast at six years. Accordingly, with the exception of gross negligence, all actions against design professionals and/or contractors are barred unless that action is brought within six years of the time of occupancy of the completed improvement or use or acceptance of the improvement to the real property.

Failure to understand the parameters of Senate Bill No. 77 and its impact upon current and potential claims in a construction setting may bring about detrimental consequences. For more information regarding the same, please do not hesitate to contact the author of this article or any member of the Plunkett Cooney Construction Practice Group.

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