

Improvement or Malpractice? Florida Court of Appeals Addresses Applicable Statute of Limitations

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In *Am. Auto. Ins. Co. v. FDH Infrastructure Servs. LLC*, No. 3D22-1143, 2023 Fla. App. LEXIS 3662, the Court of Appeals of Florida, Third District (Court of Appeals) addressed whether Florida's two-year statute of limitations governing professional malpractice actions or four-year statute of limitations governing improvements to real property was applicable to a claim involving a construction accident due to erroneous structural engineering calculations. The Court of Appeals determined that the four-year statute governing improvements to real property was more specific and governed only construction-based claims and, thus, was the appropriate governing statute.

Am. Auto. Ins. Co. involved a subrogation claim arising from a construction accident that occurred during installation of an antennae on a 952-foot tower in Miami Gardens, Florida. As discussed in the decision, Tower King II (Tower King) was hired to install an upgraded antenna on an existing television tower. Tower King contracted with FDH Infrastructure Services, LLC (FDH) to perform a structural analysis as to the stability and weight-bearing capacity of the tower. Per the contract, FDH was to assess the proposed rigging plan, which included the use of a large wooden "gin pole" used to lift loads necessary to construct the antenna. FDH provided calculations to Tower King prior to the work starting to ensure the installation would be carried out safely. Shortly after the work began, the rigging components failed, resulting in the deaths of three workers, and construction equipment sustained damage.

Following the loss and after the payment of claims, the insurer instituted a subrogation action against FDH, alleging that the erroneous load calculations precipitated the underlying claims. FDH moved for summary judgment, which included an allegation that the subrogation action was barred by Florida's two-year statute of limitations on professional malpractice claims (section 95.11(4)(a), Florida Statutes (2022)).

The Court of Appeals analyzed the two dueling statutes of limitations that could ostensibly govern the action. The first (section 95.11(4)(a)), requires an action for professional malpractice to be commenced within two years from the time the cause of action is discovered or should have been discovered with the exercise of due diligence (the Malpractice Statute). The second (section 95.11(3)(c), Florida Statutes (2022)) requires that "an action founded on the design, planning, or construction of an improvement to real property" be commenced within four years (the Improvement Statute).

The Court of Appeals turned to "three well entrenched tenets of statutory construction to guide [its] analysis: (1) a specific statute preempts a more general statute, (2) a later statute is given effect over an earlier statute; and (3) if a doubt arises, the longer period of limitations should ordinarily prevail." The Court of Appeals noted that the Improvement Statute applies specifically to only construction-based claims, whereas the Malpractice Statute encompasses any "professional malpractice action." In addition, the court found that FDH was contractually obligated to assess the structural integrity of the tower and rigger plan prior to commencement of construction—which included "performing the calculations necessary to enable the construction of the new antenna on the existing building." Given that FDH's contract was "founded on the...planning...of an improvement to real property" the Improvement Statute was the appropriate statute to govern the action.

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Subrogation professionals must always be mindful of the myriad of issues that can arise related to statutes of limitations governing subrogation claims. In many claims, several different statutes may be applicable, each with different limitations periods. Claim handlers must ensure that each potential statute is appropriately analyzed to determine which statute is applicable and that claims are timely filed.

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only and you are urged to consult a lawyer concerning your own situation and legal questions.

