PROFESSIONAL LIABILITY BLOG

Illinois Supreme Court Holds Two Year Legal Malpractice Statute of Limitations Does Not Run Until Alleged Negligent Transactional Advice Results in Adverse Judgment Against the Client

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In a recent case the Illinois Supreme Court considered whether a legal malpractice claim was barred by the two (2) year statute of limitations and when the statute of limitations began to run. The Circuit Court had previously found the limitations had expired because the clients-plaintiffs had paid attorneys' fees to new counsel and thereby constituted an injury triggering the statute. The Appellate Court reversed, and the Illinois Supreme Court affirmed the Appellate Court's judgment.

The plaintiffs sought the advice of the attorneys-defendants in a transactional matter relating to unwinding of a business or what is commonly referred to as a business divorce. Based upon the advice given, the plaintiffs unwound the company and was subsequently sued for breach of fiduciary duty. The clients-plaintiffs retained new counsel to represent them in the breach of fiduciary duty lawsuit.

After a bench trial the trial court entered judgment against the clients and found they had breached their fiduciary duty and ordered them to pay a percentage of the value of assets they improperly transferred. Approximately six (6) years after it had initially retained the attorneys-defendants to provide transactional advice, the plaintiffs filed a legal malpractice action alleging their attorneys were negligent in failing to properly advise on the proper steps to unwind and dissolve the company.

The attorneys-defendants moved for summary judgment arguing that the legal malpractice claim was barred by the two (2) year statute of limitations because their former clients sustained an injury resulting from the alleged negligence over five (5) years prior when they retained new counsel and began paying new counsel attorneys' fees. Defendants also argued that the former clients knew they were injured in approximately three (3) years prior at the latest when the trial judge in the underlying action indicated a malpractice action was a certainty.

The clients argued that if they had prevailed in the underlying lawsuit then their attorneys' negligent advice would not have caused any pecuniary injury. Therefore, the clients argued the cause of action accrued less than (2) years before filing the malpractice action when the judgment was entered against them in the underlying litigation involving the breach of fiduciary duty.

The Illinois Supreme Court agreed with clients-plaintiffs. Finding the existence of actual damages is essential to a legal malpractice claim and unless the client can demonstrate it has sustained a monetary loss as the result of some negligent act on the attorney's part a malpractice action cannot succeed. The Illinois Supreme Court explained this was not a case where prior to any adverse ruling the clients knew or should have known they had suffered a monetary loss caused by the negligent advice. Hiring new counsel to defend against the lawsuit challenging the attorney's advice and incurring fees does not, without more, trigger a cause of action for malpractice. By giving legal advice or providing legal representation an attorney is not guaranteeing the client will never be sued nor is the attorney agreeing to indemnify the client if it is sued. Moreover, even though the clients may have been alerted during the underlying bench trial there was a possibility of damages it was not until they actually became obligated to pay a sum that they otherwise would not have paid except for their attorney's alleged negligence that the legal malpractice statute of limitation was triggered.

This recent decision helps clarify under Illinois law when legal malpractice claims relating to transactional advice actually accrue for purposes of triggering the two (2) year statute of limitations.