

benchmarks

NAVIGATING THE HAZARDS OF LEGAL MALPRACTICE

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Plaintiff Cannot Rely Upon an Agreement with Defendant to Toll the Statute of Limitations

By Jeffery S. Matis

In the case of *Pitsch v. Blandford*, the Michigan Court of Appeals held that a Plaintiff may not rely upon an agreement with the Defendant to toll the statute of limitations where the agreement does not provide a specific length of time for the statute of limitations to be tolled.

In the underlying case, the Defendant attorney represented Plaintiff in litigation involving environmental contamination on property purchased by Plaintiff from another entity. Specifically, Defendant, on behalf of Plaintiff, brought suit against the entity that sold the property to Plaintiff, as well as the company's two individual owners and an excavating company, on theories of a violation of the Michigan Environmental Response Act, fraud, misrepresentation and negligence. Ultimately, the trial court dismissed all of Plaintiff's claims with the exception of the fraud claim, which Plaintiff settled.

Before Plaintiff filed his legal malpractice case against Defendant, the parties entered into a tolling agreement that provided that the two-year legal malpractice statute of limitations would be tolled until "twenty (20) days from receipt of any party of a written notice of termination of this stipulation by any other party." The tolling agreement further stated that it would be governed by Michigan law and that if "the tolling of the statute of limitations and any and all time related defenses provided for herein is found to be contrary to Michigan law or otherwise unenforceable, [Defendant] and [Plaintiff] agree to waive any affirmative defense based on any

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This case is relevant because it establishes that in order for a tolling agreement between the parties to be enforceable, the agreement must address a specific period of time in which the statute of limitations will be tolled.

If you have any legal malpractice cases involving a tolling agreement, and in which the agreement does not provide for a specific period of time in which the statute of limitations is tolled, then the date that plaintiff filed suit should be examined to see if the case was timely filed within the Michigan legal malpractice statute of limitations. If plaintiff did not timely file suit, counsel should file a motion to dismiss the plaintiff's case.

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statute of limitations or any other defense based on the expiration of time to raise a claim after the date of this stipulation but only for the period this stipulation is in effect.”

Plaintiff subsequently brought suit against Defendant for legal malpractice and alleged that the Defendant had failed to pursue all proper parties, failed to conduct necessary discovery, and failed to properly defend against the motions to dismiss the Plaintiff’s case. After Defendant moved for summary disposition, the trial court determined that the parties’ agreement to toll the statute of limitations for an indefinite time period violated public policy and dismissed the Plaintiff’s case on the basis that all of Plaintiff’s claims were time-barred.

The Michigan Court of Appeals affirmed the trial court dismissal of Plaintiff’s case and held that an agreement to toll a statute of limitations violates Michigan’s public policy and is unenforceable where the tolling provision does not have a specific length of time in which the statute of limitations will be tolled. The Court of Appeals further noted that to enforce tolling agreements, such as in the *Pitsch* case, would potentially allow plaintiffs to file legal malpractice cases 30 or more years after the action accrued.

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