



structures

A FRAMEWORK FOR DEFENDING ARCHITECTS AND ENGINEERS

8.19.04

6-Year Statute of Limitations, Not The 2 Year Statute, Applies to Professional Negligence Claims Against Architects, Engineers and Contractors.

By Bruce A. Truex and Michael Taylor

In *Ostroth v. Warren Regency*, ___ Mich. App. ___, decided July 8, 2004, the Michigan Court of Appeals effectively extended the statute of limitations applied to professional malpractice of architects and engineers from two years to six years, and from three years to six years as applicable to contractors. In this case, the Court of Appeals interpreted Michigan's statute of repose, Michigan Compiled Laws [MCL] 600.5839(1) as a statute of limitations.

Prior to this decision, the statute of limitations (MCL 600.5805(4)) operated to bar as untimely any action for professional malpractice brought more than two years (three years under the general negligence statute of limitations, MCL 600.5805(8)) after a plaintiff's cause of action accrued. The statute of repose, MCL 600.5839, barred any action against architects, engineers and contractors regardless of when plaintiff's cause of action arose, after six years had elapsed from the time of occupancy of the completed construction, improvement, or use or acceptance of an improvement.

The *Ostroth* Court reversed the lower court, which relied on Michigan's two-year statute of limitations applicable to professional malpractice claims under MCL 600.5805(4). *Ostroth* found persuasive the Michigan Supreme Court's rationale that MCL 600.5839(1) (as amended) operates as both a six-year statute of limitations and a six-year statute of repose, and held that this "special" six-year statute of limitations governs professional negligence actions against architects, engineers and contractors.

Plaintiffs brought their action against defendants Warren Regency, G.P., L.L.C. and Warren Regency Limited Partnership in May, 2000. Plaintiffs claimed pulmonary and neurological injuries allegedly caused by environmental hazards attending the renovation of the building where plaintiffs worked.

SECRET WARDLE NOTES:

Until the issue decided in *Ostroth* is addressed by either the Michigan Supreme Court or the Legislature, the Statute of Limitations for malpractice actions against professionals working in the construction field has effectively been extended to six years. Architects, engineers and contractors should expect an increase in lawsuits that previously were barred at the expiration of the two-year statute of limitations. Although a unanimous Court of Appeals panel decided this case, because of marked differences in the legal and political philosophies between the panel and the current Michigan Supreme Court, it is hoped the Supreme Court's interpretation of MCL 600.5839 will correct the errors of the *Ostroth* decision.

CONTINUED...

Plaintiffs subsequently added appellee, architect Edward Schulak, Hobbs & Black, Inc. [Schulak] as a party in November 2000.

The architect filed a motion for dismissal on the basis that Plaintiffs' claims were time-barred pursuant to the two-year statute of limitations for actions alleging professional malpractice set forth in MCL 600.5805(4). Plaintiffs contended that the applicable statute of limitations is six years, under MCL 600.5839(1), and as such, Schulak's motion must be denied. Schulak argued that MCL 600.5839 was a statute of repose and did not apply because plaintiffs "had filed their complaint within six years."

The Court identified the "central issue on appeal" as "whether the two year statute of limitations for malpractice claims, MCL 600.5805(4), the three year general statute of limitations for negligence actions, MCL 600.5805(8), or the specific six-year statute of limitations applicable to professional negligence claims against architects, engineers and contractors, MCL 600.5839, applies in this case." [footnote omitted].

Seizing upon *dicta* in *O'Brien* and in *Michigan Millers Mutual Insurance Co. v. West Detroit Building Co., Inc.*, 196 Mich. App. 367 (1992), suggesting that MCL 600.5839 is both a statute of limitations and a statute of repose, the *Ostroth* Court interpreted the statute of repose as now meaning that MCL 600.5839 "operates as a statute of limitation until the limitation period expires, after which the statute operates as a statute of repose."

Thus, the *Ostroth* Court declined Schulak's invitation to follow the holding announced in *Witherspoon v. Guilford*, 203 Mich. App. 240 that applied the three-year statute of limitations. The Court rejected architect Schulak's argument that MCL 600.5839 does not preclude the application of a general statute of limitations.

Observing that "a specific statute of limitation controls over a general statute of limitation," the Court of Appeals concluded that "[b]ecause plaintiff's complaint was filed within six years after occupancy of the completed improvement, or use or acceptance of the improvement, her cause of action against defendant is still viable."

CONTACT US

Farmington Hills

30903 Northwestern Highway, P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500 Fax: 248-851-2158

Mt. Clemens

94 Macomb Place, Mt. Clemens, MI 48043-5651
Tel: 586-465-7180 Fax: 586-465-0673

Lansing

6639 Centurion Drive, Ste. 130, Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

Grand Rapids

1550 East Beltline, S.E., Ste. 305, Grand Rapids, MI 49506-4361
Tel: 616-285-0143 Fax: 616-285-0145

Champaign, IL

2919 Crossing Court, Ste. 11, Champaign, IL 61822-6183
Tel: 217-378-8002 Fax: 217-378-8003

www.secrestwardle.com

SECRET
SW
WARDLE

Copyright 2004 Secrest, Wardle, Lynch, Hampton,
Truex and Morley, P.C.

This newsletter is published for the purpose of providing information and does not constitute legal advice and should not be considered as such. This newsletter or any portion of this newsletter is not to be distributed or copied without the express written consent of Secrest Wardle.

CONTRIBUTORS

Architect and Engineering Practice Group Chair

Mark E. Morley

Editor

Carina Carlesimo

We welcome your questions and comments.

OTHER MATERIALS

If you would like to be on the distribution list for Structures, or for newsletters pertaining to any of our other practice groups, please contact Secrest Wardle Marketing at ccarlesimo@secrestwardle.com, or 248-539-2850.

Other newsletters include:

Blueprints – Mapping legal solutions for the construction industry
Boundaries – A guide for property owners and insurers in a litigious society
No-Fault Newslite – A road map for motor vehicle insurers and owners
On the Job – Tracking developments in employment law
On the Beat – Responding to litigation affecting law enforcement
Industry Line – Managing the hazards of environmental toxic and tort litigation
Landowners' Alert – Defense strategies for property owners and managers
Community Watch – Breaking developments in governmental litigation
State of the Art – Exploring the changing face of product liability
In the Margin – Charting legal trends affecting businesses
Fair Use – Protecting ideas in a competitive world
Benchmarks – Navigating the hazards of legal malpractice
Vital Signs – Diagnosing the changing state of medical malpractice and nursing home liability