

NOTE TO MEDIA: Ben Dunlap and other members of LeClairRyan's Professional Liability Defense practice are available as resources for bylined articles or interviews on various issues impacting professionals.

For: LeClairRyan, Boston
From: Parness & Associates, Aberdeen, N.J.

FOR IMMEDIATE RELEASE

Court Case Clarifies When Clock Starts Ticking On Statute Of Limitations, Says LeClairRyan Attorney

Massachusetts decision establishes 'appreciable harm' as a necessary trigger, advises Ben Dunlap

BOSTON (7/31/18)— A recent decision by the Massachusetts Superior Court helps clarify when the clock starts ticking on the statute of limitations in a legal malpractice allegation, says Ben Dunlap, a Boston-based partner at national law firm LeClairRyan.

“In *Donarumo v. Phillips*, 2018 WL 1614043 (2018), the plaintiffs alleged their attorneys in an underlying suit had committed malpractice by overbilling them for services rendered, and by incorrectly advising them as to the strength of their defenses,” Dunlap writes in a column, [*Massachusetts Superior Court Rules Attorney Malpractice Statute of Limitations Not Triggered by Client Billing Questions or Denial of Summary Judgment*](#). The post appears in LeClairRyan's Summer 2018 Accountant and Attorney Liability NewsBrief.

The clients alleged that their attorneys' characterization of claims against them as “frivolous” caused them to forego pre-trial settlement opportunities, ultimately leading to an adverse judgment and post-trial settlement on less favorable terms, notes Dunlap, a member of LeClairRyan's Professional Liability Defense practice. “The judge in the case denied the defendant attorneys' summary judgment motion, ruling the clients' claims were not time-barred. In particular, the court noted that the clients' questions about billing did not ‘rise to the level of demonstrating actual knowledge on the Plaintiffs' part that they were being harmed by the defendants' billing practices or that the defendants were committing legal malpractice by overcharging them.’”

Addressing the clients' claim that their attorneys had over-estimated the strength of their defenses and discouraged pre-trial settlement, however, the judge ruled that this claim was not triggered by the denial of the clients' summary judgment motion in the underlying case. “Denial of summary judgment indicated merely that the case would proceed to trial; it did not ‘believe, or even significantly undermine, the Defendants' assurances that the [underlying plaintiffs'] claims were weak and would not likely succeed at trial.’” notes Dunlap, quoting from the decision.

The court's ruling serves as a reminder that under the continuing representation doctrine, the limitations clock — under Massachusetts law — does not begin running until the client has actual knowledge that he or she has suffered an appreciable harm, Dunlap adds. “A client's questions about billing or the denial of a summary judgment motion, do not, under these circumstances, demonstrate ‘appreciable harm’ sufficient to trigger the statute of limitations,” he concludes.

The full column is available at:

<https://www.leclairryan.com/pubs/xprPubDetail.aspx?xpST=PubDetail&pub=1153>

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