Indiana Court of Appeals: Continuous Representation Doctrine Does Not Apply to Financial Professionals

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In a pair of rulings issued within a month of each other, the Indiana Court of Appeals has held that the Continuous Representation Doctrine (the "CRD") does not toll the statute of limitations for client claims against brokers of financial products. These cases, Landmark Legacy, LP v. Runkle and Messmer v. KDK Fin. Servs., in which Reminger's own Anthony L. Holton, Esq. represented KDK Financial Services, provide much-needed clarification on the scope of this critical doctrine that plaintiffs have persistently tried to expand to lawsuits against financial professionals.

Under Indiana law, a consumer of professional services (e.g. legal, accounting, financial, brokerage) who learns that s/he has been wronged by the professional generally has two years within which to commence a claim for negligence and six years within which to initiate a claim for fraud. If the consumer fails to timely commence a lawsuit, the claims will be time-barred by the applicable statute of limitations. In 2003, the Indiana Court of Appeals, in Biomet, Inc v. Barnes & Thornburg, ruled for the first time that the CRD will toll (or delay) the running of the applicable statute of limitations for a legal malpractice case until the end of the attorney's representation of a client in the same matter in which the alleged malpractice occurred. The Appeals Court expanded the CRD to accountants in the 2006 case of Bambi's Roofing, Inc. v. Moriarty. The underlying policy is to give the lawyer or accountant time to either remedy the error, establish there was no error, or attempt to mitigate the harm, while still giving time for the aggrieved client to later initiate a lawsuit.

In Landmark Legacy, which arose from claims of negligent advice by a financial advisor, Plaintiff attempted to circumvent the two-year statute of limitations by arguing that the CRD applied to the financial advisor's conduct. The Appeals Court, however, affirmed the trial court's ruling and refused to expand the CRD to claims of negligence against financial advisors. In Messmer, the Court of Appeals considered the CRD's applicability to claims of fraudulent activity by a financial advisor alleged to have churned the plaintiff's annuity products to gain false commissions over a ten-year period. The trial court held that plaintiff's claims were time-barred under the six-year statute of limitations for fraud claims. On appeal, plaintiff argued that the statute should be tolled under the CRD, since the financial advisor had been continuously representing her on the same or similar matters over the years. As in Landmark Legacy, the Court rejected this attempted expansion of the CRD to financial professionals. The Court also suggested that the CRD will not apply to claims of fraud in any context; rather, it will remain limited to legal and accounting malpractice claims.

Taken together, Landmark Legacy and Messmer should mark the end of efforts by plaintiffs to expand the scope of the CRD to financial professionals. These rulings reinforce the importance of timely commencement of lawsuits by allegedly aggrieved clients of financial professionals upon discovering that they have been harmed and the important legal defenses available to financial professionals who are targeted in stale and untimely claims.

If you have any questions regarding the Landmark Legacy or Messmer opinions, or any other questions regarding professional liability or financial services, please call one of our Securities Litigation attorneys.