
Supreme Court Clarifies Statute of Limitations for Construction Malpractice Claims

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For personal injury or property damage claims made against architects, engineers, surveyors and contractors arising out of an alleged defective improvement to real property, the claimant has until six years after the first use, acceptance or occupancy of the completed improvement to bring suit. In an opinion issued Feb. 1, 2006 in *Ostroth v Warren Regency, GP, LLC* ___ Mich ___ (2006), the Michigan Supreme Court held that the six-year statute of repose (MCL 600.5839) concerning claims made against architects, engineers, surveyors and contractors is to be construed as both a statute of repose and a statute of limitation.

In *Ostroth*, the plaintiff worked in an office building between April and August 1998 where she allegedly sustained personal injuries arising from the ongoing renovation during her employment. The plaintiff initiated her lawsuit on May 14, 2000, alleging the defendant, the architect for the renovation of the office space, negligently exposed her to a hazardous environment that caused her to sustain physical injuries. The trial court granted the defendant's motion for summary disposition, holding that the two-year limitations period for malpractice claims of MCL 600.5805(6) applied. On appeal, the Michigan Court of Appeals reserved the trial court's ruling in part, holding that the six-year limitations period of MCL 600.5839(1) applied to the plaintiff's action for damages.

The specific issue addressed by the Michigan Supreme Court was whether MCL 600.5839 is only a statute of repose, in which case a shorter limitation period contained in MCL 600.5805 might apply, or whether the statute itself was both a statute of repose and a statute of limitation.

In reaching its decision, the Supreme Court overruled *Witherspoon v Guilford*, 203 Mich App 240; 511 NW2d 720 (1994), where the appellate court had previously held the application of MCL 600.5839(1) to the exclusion of the shorter periods in MCL 600.5805 would render those provisions nullified.

Significantly, the Supreme Court's decision has clarified that any action for personal injury or property damage involving a state licensed architect, professional engineer, land surveyor or contractor based on an improvement to real property is subject to a six-year statute of limitations. However, the Supreme Court emphasized in its opinion that the statute itself limits applicability to claims involving personal injury and property damage.

In other situations where an architect, engineer, surveyor, or contractor may be sued (i.e., a professional negligence claim against an architect where the claimant seeks damages for delay), other sections of MCL 600.5839 would apply.

Therefore, when determining the applicable limitations period for any claim against an architect, engineer, surveyor or contractor, it is important to consider not only the legal theory that forms the basis of the claimant's complaint, but also the type of damage or relief requested by the claimant.

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