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## NEWSLETTER

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### ALABAMA CASE LAW UPDATE: Alabama Supreme Court reaffirms the rule requiring expert testimony in professional negligence cases.

In the recent decision of *Riverstone Dev. Co. v. Garrett & Assocs. Appraisals*, the Supreme Court of Alabama affirmed the burden placed on plaintiffs in professional malpractice cases. Alabama has long held in professional malpractice cases that a plaintiff must present expert testimony from another member of the defendant's profession establishing that the defendant breached the standard of care. The case of *Riverstone Development* involved a lender who refused a property owner's offer of a deed in lieu of foreclosure due to the property's low appraised value. The property owner alleged that the low value was the fault of a real estate appraiser. Prior to this case, Alabama courts had not yet considered whether the rule requiring expert testimony in cases of professional negligence applied to real estate appraisers. At trial, no expert testified that the appraiser breached the standard of care, and the plaintiff provided no expert testimony that an appraiser's error in overlooking an easement had any effect on the property's final appraised value. The trial court granted the appraiser judgment as a matter of law. The

plaintiff appealed the case and the decision was affirmed by the Alabama Supreme Court in a published opinion. The Court held that "appraisers are engaged in a profession requiring specialized knowledge and skill and that the professional-negligence rule therefore requires expert testimony to establish a licensed real-estate appraiser's breach of the standard of care."

#### GENERAL RULE IN ALABAMA REAFFIRMED

In the opinion, the Court reaffirmed Alabama's rule on the expert testimony requirement, holding that "[t]he general rule in Alabama is that, when negligence is asserted against a professional, a witness also qualified in that profession must present expert testimony establishing both a breach of the standard of care and causation." Although the *Riverstone Development* case did not involve claims against architects or engineers, the Court made reference to the often cited 1998 case of *Collins v. City of Decatur*, in which the Court did apply the professional negligence rule to architects and engineers. *Riverstone Development* provides welcome news to

professionals of all backgrounds affirming that the burden of establishing expert testimony at trial remains in place for plaintiffs in Alabama who bring a professional malpractice case.

#### COURT REJECTS THE "OBVIOUS NEGLIGENCE" ARGUMENT

It is noteworthy that the Alabama Supreme Court also seems to reject the argument that the "obvious negligence" exception to the expert witness requirement can apply when the defendant has presented expert testimony in his defense, and the plaintiff has presented no expert testimony. The Court held "this is not a case where there was no expert testimony given regarding an alleged breach of the standard of care and the plaintiff on appeal is arguing that no expert testimony was needed because the negligence is obvious to any layperson. Rather, in this case there was expert testimony establishing an industry standard...the plaintiff now argues that a jury should nevertheless have been allowed to find that the [professional's] error was a "common-sense" error constituting negligence without any regard to the standard set forth by the experts and without any regard to whether there was evidence indicating that the error affected [the plaintiff's damages]."



The Court concluded by rejecting the argument, holding “[a]ccepting this argument would undermine the purpose of the rule requiring expert testimony in professional-negligence cases, and we decline to do so.”

## Laney & Foster prevails in recent Motion to Dismiss under Alabama Statute of Repose.

Given the lifespan of many of today’s construction projects, professionals may wonder: “How long after I provide my services for a project can I be held legally liable?”

In a recent case involving a civil engineering firm, Laney & Foster filed a motion to dismiss which was granted based on Alabama’s seven (7) year Statute of Repose.

### A STATUTE OF REPOSE ACTS AS A STRICT BAR

A statute of repose is a “statute barring any suit that is brought after a specified time since the defendant acted . . . even if this period ends before the plaintiff has suffered a resulting injury.” *Black’s Law Dictionary*. Statutes of Repose differ from Statutes of Limitations in a few regards, one being that they are generally enforced much more strictly.

### ALABAMA ADOPTED STATUTE OF REPOSE IN 1994

In 1994, the Alabama Legislature established what was known as the contractor’s statute of repose. Section 6-5-221 of the Alabama Code provided architects, contractors and engineers

with a 13-year statute of repose. This required all civil actions relating to construction projects, whether based in tort, contract or otherwise, to be brought within 13 years after substantial completion of the project.

The 2011 legislative session saw the Alabama Legislature make significant changes to the Alabama Statute of Repose. Under the amendments, no lawsuit may now be brought against any architect, engineer, or licensed contractor following architectural or engineering plans, whether in contract, tort, or otherwise, which arises more than seven years after substantial completion of the construction project. Ala. Code § 6-5-221(a).

Generally, a claim must be raised within two years after the cause of action arises. Ala. Code § 6-5-221(a). Under Alabama law, a cause of action arises at the time of injury, or where the injury is latent in nature (existing, but not yet developed or manifest), at the time the injury should reasonably be discovered. Ala. Code § 6-5-220(e).

### PROTECTION FROM LATENT DEFECTS

Many architects, engineers and contractors are well aware of the fact that a latent defect might not actually cause an injury, or even be discovered, until many years after the completion of a project. The Legislature took action on this specific point and formed a concrete rule that if the cause of action does not arise within 7 years of substantial completion of the project, then the potential plaintiff is completely and forever barred from bringing a legal claim against the architect, engineer or contractor on the

project. Alabama law defines substantial completion as the time at which the construction of the improvement on or to real estate is sufficiently completed so that the owner can occupy or utilize the improvement for the use for which it is intended. Ala. Code § 6-5-220(d). The Statute notes that it was the purpose and intent of the Legislature to provide protection for architects, engineers and contractors from exposure to liability for injuries and damages which may occur long after the completion of their professional services. Ala. Code § 6-5-225(b).

### ALABAMA’S STATUTE OF REPOSE REMAINS UNCHALLENGED

In the five years since the change from a 13 to a 7 year Statute of Repose, Alabama appellate courts have not yet been asked to rule on this issue. This suggests that the rule is as the legislature intended it to be, a complete bar to all causes of action arising more than seven years following substantial completion. This shortened statute of repose should give added protection to all licensed architects, engineers and contractors providing their services in the state of Alabama.

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