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# Bentleys, Billionaires, and the Statute of Repose for Michigan Legal Malpractice Claims

By David Saperstein

Q. What's the difference between odd and eccentric?

A. About a billion dollars.

Count Chinquinho Scarpa from Sao Paolo was known to be eccentric: after all, he adopted his \$20,000 cockatoo as his daughter. Last year, after learning that the ancient Egyptians believed that they would enjoy their buried treasures in the next world, he posted on Facebook that he planned to bury his Bentley: *"I decided to do as the Pharaohs: this week I will bury my favorite car, the Bentley here in the home garden! Bury my treasure in my palace!"*

The public was understandably outraged. In a city where an estimated 70% of the population lives in substandard housing, many without electricity and plumbing, it was not so gently suggested that there were better uses for his \$500,000 car. Instead of changing his plans, the Count posted pictures of himself and the car next to a ditch, and then himself operating a backhoe to dig an even bigger ditch, and finally driving the Bentley down a ramp into the ditch.

*New statute of repose*

So, what does this have to do with legal malpractice claims in Michigan? Frequently, legal malpractice claims involve an eccentric testator, or an angry family member willing to make outrageous claims in a dispute with a sibling or stepmother. When lawyers get caught in the crossfire between wealthy family members, the result can be messy, time consuming, and expensive – even if the allegations of malpractice are tenuous. Often, these claims arise out of the

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interpretation of a trust or other estate planning document that may have been drafted years (or decades) ago.

In 2013, the Michigan Legislature addressed this issue by creating a “statute of repose” for legal malpractice actions. Under Mich. Comp. Laws § 600.5838b(1)(b), an action for legal malpractice may not be commenced more than “six years after the date of the act or omission that is the basis for the claim.”

Statutes of repose can provide significant advantages to the defense because they begin at the time of an easily ascertainable event unrelated to an injury. Tolling doctrines, such as fraudulent concealment and the discovery rule, do not generally apply. Statutes of repose can be applied to bar a claim *even before* an injury or damage occurs.

Importantly, the new statute of repose does not eliminate the current statute of limitations for legal malpractice claims, which remains two years from the discontinuance of the professional relationship out of which the claim for malpractice arose, or six months from discovery of the existence of a possible claim, whichever is later. However, in some situations, a claim that is timely under the statute of limitations will be barred by the new statute of repose. It is expected that there will be legal challenges to the statute, including issues such as whether the statute can be retroactively applied and whether it can bar a claim arising out of a continuing representation.

Count Scarpa did not end up burying his car, and Maddin Hauser is not currently accepting donations for spare Bentleys. But if you have a question concerning Michigan’s new statute of repose, we would be happy to speak with you.