



Alabama Supreme Court Applies Two-Year Statute of Limitations to Wantonness Claims

In a recent decision, the Alabama Supreme Court clarified the statute of limitations that applies to claims of wantonness.

William Walker filed an action against Capstone Building Corporation, alleging claims of negligence and wantonness arising out of an injury he sustained while working for a subcontractor at a construction site on which Capstone was the general contractor. Capstone filed a motion to dismiss, alleging that Walker's claims were barred by the two-year statute of limitations set out in section 6-2-38 of the Alabama Code. The trial court granted Capstone's motion to dismiss. Walker appealed to the Alabama Court of Civil Appeals, arguing that the court should apply the six-year statute of limitations found in section 6-2-34(1) of the Alabama Code to his wantonness claim. The Court of Civil Appeals agreed and applied the six-year statute of limitations, and Capstone petitioned the Alabama Supreme Court for certiorari review.

The Alabama Supreme Court was compelled to determine the statute of limitations applicable to claims alleging wantonness. Section 6-2-34(1) provides that actions for any trespass to a person such as false imprisonment or assault and battery must be commenced within six years. If Walker's claim did not fall within this statutory period, it would fall within the two-year period provided by the catchall provision of section 6-2-38.

The Court of Civil Appeals had relied upon McKenzie v. Killian, 887 So. 2d 861 (Ala. 2004), which held that since wanton conduct is the equivalent of intentional conduct, the six-year statute of limitations applied. However, the Supreme Court pointed out that McKenzie was an exception in a long line of cases holding that the two-year limitations period applies to wantonness claims, and the Court had applied the two-year statute of limitations after McKenzie was decided. Additionally, the Court explained that wantonness involves recklessness, and intent to injure another is not an element of the claim. As such, claims alleging wanton conduct are governed by section 6-2-38(1), providing a two-year limitations period for all actions for any injury to the person or rights of another not specifically listed by statute.

Thus, the Supreme Court overruled McKenzie, but determined it would apply its holding prospectively.

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As a result, litigants whose causes of action accrued on or before the date of the original issuance of the Court's opinion would have two years from that date to bring their action, unless the time for filing their action under the six-year limitations period under McKenzie would expire sooner. However, the Court made an exception for the current case and applied its decision to Capstone, since it was the prevailing party that had brought about a change in the law. There was also no indication that Walker relied on the six-year limitations period announced in McKenzie in deciding when to file his complaint.

Ex parte Capstone Building Corporation, 2012 WL 887497 (Ala. 2012)

PROTECTIVE MEASURES

CONVENIENCE COUNTS Forum Non Conveniens

In a recent victory for defense interests, the Alabama Supreme Court ordered the Chambers County Circuit Court to transfer a case from the county selected by plaintiff to the county where the accident occurred. Ex parte Southeast Alabama Timber Harvesting, L.L.C., 2012 WL 1371411 (Ala. Apr. 20, 2012). The accident at issue occurred in Lee County, Alabama, a fairly conservative venue. The main office of the logging company was based in Chambers County, a more plaintiff-friendly venue. The logging company asked the circuit court to transfer the matter to Lee County in the interest of justice. The Circuit Court refused.

In issuing a writ of mandamus requiring the transfer, the Alabama Supreme Court noted that Chambers County's only connection to the accident is the logging company, but Lee County had much more significant connections. The responding emergency personnel were in Lee County, and the only non-party witness to the accident testified that traveling to Chambers County would be a significant burden. "Although it is not a talisman, the fact that the injury occurred in the proposed transferee county is often assigned considerable weight in an interest-of-justice analysis." Therefore, it ordered the transfer.

This case provides defense counsel with an effective way to attack plaintiff's choice of venue if the accident takes place in a more conservative jurisdiction. Defense counsel is not "stuck" with plaintiff's choice, if a case can be made for the interest of justice, and the witnesses' convenience matters.

FEES & BURGESS, P.C. — Calendar of Events

Fees & Burgess, P.C., is proud to present, and participate in the presentation of, the following upcoming seminar:

Contracting Under the UCC: A Basic Primer to Articles 1, 2, and 2A

Date: July 30 – August 1, 2012

Location: Boston, Massachusetts

Session number 318, will be July 30, 2012, from 4:00 p.m. – 5:15 p.m.

Session number 418, will be July 31, 2012, from 11:15 a.m. – 12:30 p.m.

Session number 517, will be July 31, 2012, from 2:30 p.m. – 3:45 p.m.

Session number 617, will be July 31, 2012, from 4:00 p.m. – 5:15 p.m.

These four sessions, presented by Allen Anderson and Ryan Blount of FEES & BURGESS, P.C., and in conjunction with the [2012 NCMA World Congress](#), provide a practical introduction to the foundations of domestic commercial contracting. The classes will feature discussion of risk management in several areas key to those buying or selling under the Uniform Commercial Code (UCC), including formation of commercial agreements and determination of applicable contract terms; performance issues under those agreements or terms, including risk of loss and delivery, acceptance, repudiation, warranties, and disclaimers; and, of course, disputes, remedies, and dispute resolution.

To register, or for more information on this and other programs, please visit us online at www.feesburgess.com; contact us by e-mail at seminars@feesburgess.com; or by phone at (256) 536-0095.



Seminars

During these rough economic times, it is important to get the most for your money. The lawyers of Fees & Burgess, P.C., combined, have many years experience working in various fields, as both in-house and private counsel, representing a diverse clientele. Our attorneys have extensive experience in many areas of law, including employment law; intellectual property; supply chain management; mergers and acquisitions; contract negotiation; dispute resolution; and various other fields.

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Topics that Fees & Burgess, P.C., can provide training on include, but are not limited to:

A Recession Era Guide to Collecting on Construction Contracts	Managing Gender Identity Issues in the Workplace
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Construction Contracting	Privacy in the Workplace
Contingent Employees and Labor Outsourcing	Reducing Employee Benefits Costs for Alabama Businesses
Diversity Training	Reducing Risk in Purchasing Terms and Conditions
Elements of an Electrical Manufacturing Services Contract	Reduction in Workforce Strategies
Employment Law Survival Training for Managers	Retaliation and Whistleblowers
Family Medical Leave Act	Uniform Commercial Code: Primer to Articles 1, 2, and 2A
Hiring and Firing	Violence in the Workplace
Immigration Compliance	Wage and Hour Issues/Fair Labor Standards Act
Incoterms® 2010	Americans with Disabilities Act
Indemnity and Limitation of Liability Contract Clauses	Managing Employee Use of Internet and E-mail in the Workplace
International Contracting	Ethics, Business Conduct and Compliance in Government Contracting
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FEES & BURGESS, P.C.

Volume 10, Issue 2

June 2012

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