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## Legal Malpractice Claims Begin to Accrue When It Is “Plainly Obvious” The Plaintiff Has Been Injured

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On June 23, 2022, the United States District Court for the Northern District of Illinois dismissed Plaintiffs’, Container Direct International Future, Inc., Concepts Design Innovation Furniture, Inc., Concepts Design Furniture, Inc., Comptoir Des Indes, and David Quaknine, legal malpractice claim with prejudice. *Container Direct Int’l Furniture, Inc. v. Fisher & Broyles LLP*, No. 22 C 1086, 2022 WL 2257129, at \*1 (N.D. Ill. June 23, 2022). The Complaint alleged that Defendants, Alastair Warr and the law firm of Fisher & Broyles LLP, committed legal malpractice in connection with an intellectual property case filed against Plaintiffs. More specifically, the Complaint claimed that the Defendants failed to carefully review Plaintiffs’ insurance policy, failed to advise Plaintiffs they should make an insurance claim, and failed to advise Plaintiffs to obtain coverage counsel, among other things. *Id.*

Defendants began representing Plaintiffs in the underlying intellectual property case on March 18, 2016, nearly two years after the litigation commenced. *Id.* at \*2. Plaintiffs alleged that they informed Defendants that they had insurance coverage, and that it might cover the litigation costs. *Id.* Plaintiffs further alleged that Defendants did not ask for a copy of the policy, did not review the policy, but advised them that any claim would be denied. *Id.* On

January 29, 2018, a jury found Plaintiffs liable for trademark, patent and copyright infringement and entered a damage award of \$3,559,284.

Defendants withdrew from representing Plaintiffs in February 2019. Plaintiffs then retained new counsel who advised Defendants to file an insurance claim. *Id.* Plaintiffs' insurer denied it was liable for defense costs or indemnity on September 10, 2019. *Id.* Litigation with the insurance company ensued. On May 14, 2021, the Circuit Court of Cook County decided that Plaintiffs' insurance company had no duty to indemnify or pay defense costs associated with the underlying matter because Plaintiffs failed to timely notify the insurance company of the claim. *Id.*

On December 17, 2021, Plaintiffs filed a legal malpractice action against Defendants. Defendants moved to dismiss on statute of limitations grounds. Defendants argued that Plaintiffs' legal malpractice claim was time-barred because Plaintiffs knew or should have known that they were damaged by Defendants' negligence by September 10, 2019, when their insurer disclaimed coverage. As such, Plaintiffs' lawsuit, filed on December 17, 2021, was untimely under the two year statute of limitations. *Id.* In response, Plaintiffs argued that it was not until the May 2021 decision finding that the insurance company had no duty to defend that they became aware that Defendants committed legal malpractice. They asserted that the Circuit Court's May order made it clear that their insurance company would have been required to defend Plaintiffs in the underlying matter if Plaintiffs had timely filed their claim. The Court disagreed, describing Plaintiffs' interpretation of the May order as "beyond a stretch." *Id.* at \*3.

In its opinion, the Court clarified that, while the statute of limitations for legal malpractice claims typically does not begin to run until the trial court enters a final judgment, this is not the case when the plaintiff suffers damages before the end of the litigation as a result of their attorney's neglect. *Id.* at \*4. Here, the Court found that Plaintiffs had "some indication of wrongdoing" when their insurer denied coverage. To be timely, Plaintiffs had to file their Complaint within two years of that date. As Plaintiffs failed to meet that deadline, the Court granted Defendants' motion to dismiss. *Id.*

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