IN THE SUPREME COURT OF FLORIDA

CASE NO. 92,695

PEREZ-ABREU, ZAMORA &
DE LA FE, P.A. and ENRIQUE ZAMORA,

Petitioners,

vs. 3d DCA CASE NO. 97-989

MANUEL E. TARACIDO, MEDICAL CENTERS OF AMERICA, INC., MEDICAL CENTERS OF AMERICA AT SOUTH FLORIDA, and MEDICAL CENTERS OF AMERICA AT CENTRAL FLORIDA,

Respondents.
_____/

PETITION FOR DISCRETIONARY REVIEW
OF A DECISION OF THE DISTRICT COURT
OF APPEAL OF FLORIDA, THIRD DISTRICT

PETITIONERS' BRIEF ON THE MERITS

August 21, 1998

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INTRODUCTION

This is a petition to review a decision of the District Court of Appeal for the Third District based on express and direct conflict with decisions both of this Court and of other districts. This Court has jurisdiction. Art. V, § 3(b), Fla. Const. (1980); Fla. R. App. P. 9.030(a)(2)(A)(iv). The petition arises from a summary judgment based on a statute of limitations defense in a legal malpractice case. The Petitioners are attorneys who represented the Respondents in a sale of stock. The buyer of the stock later sued the Respondents. The attorney representing the Respondents in that lawsuit told them that the contracts had been improperly drafted. The litigation was later settled. More than two years after they learned of the potential malpractice, but less than two years after the litigation was settled, Respondents sued their corporate attorneys. The sole issue is whether the limitations period began when the clients learned of the malpractice, or only after the litigation resulting from the malpractice was settled.

CERTIFICATE OF FONT TYPE

The undersigned certifies that this brief was drafted using the Times New Roman 14 point font type.

STATEMENT OF THE CASE AND FACTS

Respondent Manuel Taracido was an officer, director, and half owner of Medical Centers of America, Inc. ("MCA"), a marketing company for, and owner of, medical centers (SR. 31, 42, 51). Charles Childers, who owned stock in one medical center, later bought from Taracido stock in two others (R. 1:30, 37; SR. 2, 28, 100, 196). Enrique Zamora of Perez-Abreu, Zamora & de la Fe, P.A., both Petitioners ("Attorneys"), represented Taracido and MCA ("Clients") and drafted the agreements used in the sale (R. 1:26; SR. 76, 236).

Childers later became dissatisfied with the companies' diminished profits and threatened to sue (SR. 228-29, 235). The parties negotiated for return of the stock, with Taracido depositing $20,000 in the Attorneys' escrow account (SR. 26, 105-06, 132). Taracido later refused to repurchase the shares and a dispute developed over the funds held in escrow (SR. 106).

The Attorneys interpleaded the funds, naming as defendants MCA, Childers, and Taracido (R. 1:113-14). In 1990, Childers filed a crossclaim and third-party complaint against MCA asserting fraud; negligence; violations of sections 517.301 and 517.211, Florida Statutes; civil theft; breach of fiduciary duty; and breach of the settlement agreement (SR. 1, 4-9). Childers alleged that Taracido had

misrepresented the centers' net worth, the profitability of third-party contracts, and the use for the funds received in the stock sale (SR. 3-4).

Sometime before June 1990, Taracido met with his litigation attorney, who told him that the stock purchase agreements violated the Florida Securities and Investor Protection Act and that the agreement was defective because it was missing a disclosure provision (SR. 237-39). In January 1992, the parties settled their dispute (SR. 167).[1] In the settlement agreement, Taracido stated his belief that "Childers may prevail in the pending Litigation by virtue of an asserted violation of the provisions of Chapter 517, Florida Statutes" (SR. 167).

In December 1993, almost two years after the settlement and more than two years after the Clients learned that the stock purchase agreements were defectively drafted, the Clients sued the Attorneys for malpractice (R. 1:25). The complaint alleged that the Attorneys failed to advise the Clients that they had to disclose their financial condition and that the agreement must acknowledge such disclosures (R. 1:26). It also asserted that "the Childers litigation alleged that the [Clients] had failed to disclose the financial condition of the companies in which the

[1] The district court's opinion mistakenly cites the settlement date as January 1993, rather than 1992 (R. 2:136). The opinion is reported at 705 So. 2d 41.

stock was being purchased and failed to disclose the use of proceeds of the sale of the stock. Such failures were the direct result of the [Attorneys] failing to properly advise the [Clients] as to the necessary disclosures" (R. 1:27). The Clients alleged as damages not only the amount of their settlement with Childers, but also the expense of defending the shareholder litigation (R. 1:29).

The Attorneys moved for summary judgment on two grounds: (1) as a matter of law, the attorney did not commit malpractice; and (2) the statute of limitations had expired (R. 1:61, 67). The parties later agreed that summary judgment was inappropriate on the malpractice issue (R. 1:97, 112). The court held a hearing on the second ground and determined that the limitations period had expired (R. 1:128).[2] The court granted summary judgment in Defendants' favor (R. 1:130).

On appeal, the district court reversed, holding that "the statute of limitations in prior transactional legal malpractice actions begins to run when related

[2] The judge also mentioned that summary judgment might have been appropriate on the merits because the affidavit filed on the Clients' behalf did not state that the Attorneys' conduct fell below the standard of care (R. 1:128). The existence of malpractice is not an issue before this Court, and therefore is assumed for purposes of determining when the limitations period begins. Whether the Attorneys committed malpractice remains hotly contested.

third party litigation is concluded" (R. 2:136-37). The court denied the Attorneys' motion for rehearing and for rehearing *en banc* (R. 2:141, 149).

The Attorneys sought review in this Court based on express and direct conflict between the district court's opinion and those from this Court and other district courts of appeal. The brief on jurisdiction noted that this Court granted review of *Silvestrone v. Edell*, 701 So. 2d 90 (Fla. 5th DCA 1997), *review granted*, 23 Fla. L. Weekly No. 10 (Fla. Feb. 26, 1998), which considered when the limitations period begins for litigational malpractice, and argued that review of this case along with *Silvestrone* would allow the Court to offer complete guidance on the subjects of both transactional and litigational legal malpractice. This Court accepted jurisdiction in this case but dispensed with oral argument.

SUMMARY OF ARGUMENT

A cause of action accrues when the injured party incurs *some* damages, even if the damages are still incomplete. *City of Miami v. Brooks*, 70 So. 2d 306, 308 (Fla. 1954). The Client's cause of action accrued when they learned that the stock purchase agreements had been defectively drafted and were forced to defend the shareholder litigation.

This case is indistinguishable from *Edwards v. Ford,* 279 So. 2d 851 (Fla. 1973), where this Court held that the cause of action accrued when the clients learned that the contract their attorney drafted was "probably usurious," not when the subsequent litigation was eventually settled. *Id.* at 853. The district court's opinion contradicts *Edwards* and other cases holding that a cause of action for transactional legal malpractice accrues when the client learns of the negligent act, not when the related litigation is concluded.

The district court's opinion also contradicts the plain language of the statute of limitations. The statute provides that limitations period begins when the cause of action is discovered. § 95.11(4)(a), Fla. Stat. (1989). The plain wording requires that the limitations period begin when the Clients learned of the malpractice, regardless of when related third-party litigation concludes.

Finally, the district court's opinion, if affirmed, would extend the statute of limitations for transactional legal malpractice into the indefinite future. Under the district court's holding, a cause of action for transactional legal malpractice may not accrue for many years after a transaction. Faded memories and purged files may prejudice the attorney's defense in such cases. The statute already liberally extends

the limitations period by providing that the period does not begin until the negligence is discovered. This period should not be extended even further.

ARGUMENT

THE CLIENTS' CLAIM IS BARRED BECAUSE IT WAS FILED MORE THAN TWO YEARS AFTER THEY LEARNED THAT THE STOCK PURCHASE AGREEMENTS WERE DEFECTIVELY DRAFTED AND BEGAN EXPENDING ATTORNEYS' FEES DEFENDING THE RESULTING LITIGATION

The statute of limitations for legal malpractice is two years, "provided that the period of limitations shall run from the time the cause of action is discovered or should have been discovered with the exercise of due diligence." § 95.11(4)(a), Fla. Stat. (1989).[3] The limitations period begins when the client learns of the negligence. *Edwards v. Ford,* 279 So. 2d 851, 853 (Fla. 1973). This doctrine is known as the "discovery rule." *See* Dougherty, Annotation, *When Statute of Limitations Begins to Run Upon Action Against Attorney For Malpractice*, 32 A.L.R. 4th 260 § 2 (1981).

[3] The statute has not changed. *See* § 95.11(4)(a), Fla. Stat. (1997).

A. Cases applying the discovery rule to transactional legal malpractice have held that a cause of action accrues when the client learns of the malpractice and begins suffering damages, such as by defending litigation resulting from the malpractice

The general rule is that a cause of action accrues when the injured party incurs *some* damages, even if all the damages have not been incurred:

> The general rule, of course, is that where an injury, although slight, is sustained in consequence of the wrongful act of another, and the law affords a remedy therefor, the statute of limitation attaches at once. It is not material that all the damages resulting from the act shall have been sustained at that time and the running of that statute is not postponed by the fact that the actual or substantial damages do not occur until a later date.

City of Miami v. Brooks, 70 So. 2d 306, 308 (Fla. 1954). This rule has been regularly applied to legal malpractice cases. *See Sawyer v. Earle*, 541 So. 2d 1232, 1234 (Fla. 2d DCA) (statute of limitations not tolled merely because client, although knowing of the malpractice, is not able to determine the full extent of the damages, citing *Brooks*), *cause dismissed*, 545 So. 2d 1368 (Fla. 1989), *disapproved on other grounds*, 565 So. 2d 1323 (Fla. 1990);[4] *Breakers of Fort Lauderdale, Ltd. v. Cassel*,

[4] In *Peat, Marwick, Mitchell & Co. v. Lane*, 565 So. 2d 1323 (Fla. 1990), this Court disapproved *Sawyer* "to the extent it conflicts with this decision." *Id.* at 1327. The Court acknowledged, however, that "this case can, to a certain extent,

528 So. 2d 985, 986 (Fla. 3d DCA 1988) (cause of action accrued when defendant learned that its attorney had improperly failed to settle the lawsuit, requiring client to continue to defend it, because "damage from that failure, although not then completely ascertainable, is immediate," citing *Brooks*); *Kellermeyer v. Miller*, 427 So. 2d 343, 346-47 (Fla. 1st DCA 1983) (cause of action accrued when damage occurred, even though the amount remained uncertain, citing *Brooks*).

As shown below, this Court, other Florida courts, and other states, in applying the discovery rule to transactional legal malpractice, apply the *Brooks* rule and hold that the cause of action accrues when the client learns of the malpractice and begins suffering some damage -- such as by expending attorneys' fees in defending litigation resulting from the malpractice -- and not when the resulting litigation is concluded and all the damages can be ascertained.

1) This Court's decision in *Edwards v. Ford* governs this case

be distinguished from [*Sawyer*] . . ." *Id.* at 1326. In fact, the Court quoted with approval *Sawyer*'s holding that a cause of action accrues even though the exact amount of damages has not been determined. *Id.* at 1326-27. The only conflict was *Sawyer*'s dictum that a cause of action for litigation malpractice *always* accrues when the client discovers the negligence. In *Peat, Marwick*, this Court disapproved such a broad rule. This case does not concern litigation malpractice.

This Court, considering similar facts, concluded that the limitations period begins when the client learns of the malpractice and suffers some damages. *See Edwards v. Ford*, 279 So. 2d at 851. In *Edwards*, attorneys drafted an agreement for purchase, leaseback, and repurchase of property to a corporation. The corporation later sued the clients, alleging the agreement was usurious. The case was settled. When the attorneys sued the clients for their attorneys' fees, the clients counter-claimed for malpractice. This Court held that the limitations period began when the clients knew "that a cause of action had accrued in their favor" -- that is, when they were informed that the agreement was "probably usurious." *Id.* at 853. At that point, the clients "had knowledge that a cause of action had accrued in their favor" and had suffered "accompanying damages (even though perhaps minimal at that point)." *Id.*

Edwards acknowledges that the limitations period begins when the client learns during a lawsuit that its corporate attorneys have done something wrong. At that point, the client knows that a cause of action has accrued, even if its damages are minimal. At that point, redressable harm is established. *Cf. Peat, Marwick, Mitchell & Co. v. Lane*, 565 So. 2d 1323, 1325 (Fla. 1990) (generally, a cause of action for negligence does not accrue until the existence of a redressable harm is established and the injured party knows or should know of either the injury or the negligent act).

In this case, the district court held that the fact that the Clients were served with a lawsuit and advised by counsel of possible negligence does not constitute redressable harm (R. 2:138). This holding contradicts *Edwards*. Under *Edwards,* the cause of action accrued when the Clients learned of the malpractice and began suffering damages. The damages they seek in this case include the attorneys' fees they expended in defending the shareholder litigation, which they argue was a direct result of the malpractice. This is more than the "knowledge of potential harm" the district court held was insufficient (R. 2:138).

According to the district court, "it was not clear that the plaintiffs had suffered damage until the conclusion of the shareholder litigation. Damage became apparent once the case was settled. At that time, the attorneys' negligence in drafting the contracts resulted in actual harm to their former clients" (R. 2:139). This assumption -- that actual harm occurred only when the shareholder litigation was settled -- overlooks the attorneys' fees the Clients expended in defending that case before settlement, which they assert as damages in this case.

2) Other Florida courts have held that a cause of action for transactional legal malpractice accrues when the client learns of the malpractice, not when the related litigation is concluded

Several Florida courts have held that a cause of action for transactional legal malpractice accrues when the client learns of the malpractice. *See Zitrin v. Glaser*, 621 So. 2d 748, 750 (Fla. 4th DCA 1993) (cause of action for malpractice in drafting employment agreement accrued when employee breached the agreement, not when breach of contract case was complete); *Kellermeyer*, 427 So. 2d at 346-47 (cause of action accrued when client discovered, in an action to recover under promissory note, that its attorney had defectively drafted closing documents, not when foreclosure proceeding was concluded). *See also Hampton v. Payne*, 600 So. 2d 1144, 1145 (Fla. 3d DCA 1992) (city's ruling that it lacked jurisdiction over petition for reinstatement because the employee had not timely appealed her dismissal, or, at least, the employee's discharge of her attorney two years later, placed her on notice that her attorney had committed malpractice), *review denied*, 617 So. 2d 319 (Fla. 1993); *Martin v. Pafford*, 583 So. 2d 736, 739 (Fla. 1st DCA 1991) (cause of action for legal malpractice accrued when client's subsequent attorney informed her that "it appears that your [former] attorney was incompetent," not when post-conviction proceeding finding ineffective assistance of counsel concluded); *Sawyer*, 541 So. 2d at 1234 (cause of action for legal malpractice accrued when client discharged his attorney and began suffering damages from the malpractice, not when

his bar grievance was concluded); *Breakers*, 528 So. 2d at 986 (cause of action accrued when defendant learned that its attorney had improperly failed to settle the lawsuit, requiring client to continue to defend it, not when the case was eventually settled for a greater amount).

Results in federal court have been similar. In *Pioneer Nat. Title Ins. Co. v. Andrews*, 652 F.2d 439 (5th Cir. Unit B 1981), the court interpreted section 95.11(4)(a) in a legal malpractice action. A title insurer hired an attorney to perform a title search, and issued a policy based on the results. The title insurer was later sued based on a defective title. The court held that title insurer's cause of action against attorney who performed the title search accrued when the insurer incurred the expense of defending itself in a defective title suit. *Id.* at 442.

In all these cases, the cause of action accrued when the client discovered the malpractice, even though the damages from the negligence were incomplete. Similarly, in this case the cause of action accrued when the Clients learned of the defectively-drafted stock purchase agreement and began expending attorneys' fees in defending the resulting litigation.

Although some Florida cases involving transactional legal malpractice have held that the cause of action did not accrue until litigation was concluded, in

those cases the litigation did not result from the malpractice, and therefore the attorneys' fees incurred could not be recovered as damages. *See, e.g, Zuckerman v. Ruden, Barnett, McClosky, Smith, Schuster & Russell, P.A.*, 670 So. 2d 1050, 1051 (Fla. 3d DCA) (client would suffer no damages from the attorneys' malpractice in drafting loan documents unless the client were unable to foreclose on the mortgage, which could not be determined until the foreclosure action was resolved), *review denied*, 679 So. 2d 774 (Fla. 1996); *Throneburg v. Boose, Casey, Ciklin, Lubitz, Martens, McBane & O'Connell, P.A.*, 659 So. 2d 1134 (Fla. 4th DCA) (cause of action for attorney's malpractice in amending declaration of covenants on property did not accrue until a court ruled the amendment invalid), *cause dismissed*, 664 So. 2d 248 (Fla. 1995); *Spivey v. Trader*, 620 So. 2d 212, 213 (Fla. 4th DCA 1993) (cause of action for attorney's malpractice in advice concerning transfer of properties, which resulted in execution against the properties, did not accrue until a judgment was rendered in proceedings supplementary to personal injury action); *Adams v. Sommers*, 475 So. 2d 279, 280-81 (Fla. 5th DCA 1985) (cause of action did not accrue until validity of mortgage was finally determined on appeal, especially because the attorney kept assuring the client that the circuit court did not have jurisdiction).

In these cases, the cause of action did not accrue until the instruments the attorney had prepared were declared invalid in totally unrelated litigation. Only then did the malpractice become apparent. Here, the question is not the agreements' validity, but whether they adequately protected the Clients from having to defend a claim in the first place. The Clients allege that had the Attorneys properly advised them, they would have disclosed the information required for the stock sale, and the agreements would have acknowledged the disclosures. Therefore, the shareholder litigation would not have been filed. Moreover, because the litigation involved in these other cases (such as a foreclosure proceeding) was unrelated to the malpractice, the fees expended in the litigation were not part of the damages. Here, however, as in *Edwards* and the other cases cited above, the shareholder litigation resulted directly from the malpractice.

One court has explained the difference between these two situations:

> If the lower court's ruling, which was adverse to the client, was reversed on appeal, would the client still have a legal cause of action for malpractice? Where the response to this question is in the negative, the statute of limitations begins to run at the time an appellate decision is rendered; otherwise, the applicable statute of limitations would begin when the client knew or should have known of the alleged malpractice. In *Graham v. Holler*, 499 So. 2d 62, 63 (Fla. 5th DCA 1986), we phrased the question somewhat differently as: Whether the collateral litigation, depending on its outcome, could have negated an attorney's delinquent act.

Drake v. Simons, 583 So. 2d 1074, 1075 (Fla. 5th DCA), *review denied*, 592 So. 2d 682 (Fla. 1991). Here, had the Clients prevailed in the shareholder litigation, they nevertheless would have an action for malpractice because, according to them, had the Attorneys included a disclosure provision in the agreements and advised them of disclosure requirements, the Clients would not have been sued. Their damages began when they had to defend litigation resulting from the malpractice.

3) Other states applying the discovery rule to legal malpractice claims have held that a cause of action accrues when the client learns of the malpractice and defends the resulting litigation

Other jurisdictions, applying the discovery rule to legal malpractice claims, recognize that a claim accrues when the client incurs fees and costs in

litigation resulting from his former attorney's malpractice, even if that litigation has not been resolved. *See Williams v. Ely*, 668 N.E.2d 799, 804 (Mass. 1996) (claim accrued when clients learned they had incurred some gift tax obligations, not when the amounts were fixed); *Gonzales v. Stewart Title of Northern Nevada*, 905 P.2d 176, 178 (Nev. 1995) (claim accrued when lawsuit to construe negligently-drafted promissory note was filed, not when it was concluded); *Carvell v. Bottoms*, 900 S.W.2d 23, 28-30 (Tenn. 1995) (claim accrued when clients were sued based on a negligently-drafted deed, not when judgment was rendered); *Beesley v. Van Doren*, 873 P.2d 1280, 1281-83 (Alaska 1994) (claim accrued when prior conduct based on lawyer's advice caused additional expense in the resulting case); *Sharts v. Natelson*, 885 P.2d 642, 645-47 (N.M. 1994) (claim accrued when client incurred fees resisting imposition of covenants that attorney negligently included in deed, not upon entry of adverse judgment); *Palisades Nat. Bank v. Williams*, 816 P.2d 961, 963-64 (Colo. Ct. App. 1991) (claim accrued when negligently-drafted agreement required client to incur attorneys' fees); *Zimmie v. Calfee, Halter & Griswold*, 538 N.E.2d 398, 401 (Ohio 1989) (claim accrued when court in divorce action invalidated the prenuptial agreement attorney had drafted, not when it rendered the judgment); *Shaw Investment Co. v. Rollert*, 407 N.W.2d 40, 43 (Mich. Ct. App. 1987) (claim accrued when

opposing party raised usury as defense to enforcement of promissory note attorney had drafted); *Magnuson v. Lake*, 717 P.2d 1216, 1218-20 (Or. Ct. App. 1986) (claim accrued when clients learned that land sale contract was negligently drafted and were forced to defend resulting litigation, not when judgment was entered); *Dixon v. Shafton*, 649 S.W.2d 435, 438-39 (Mo. 1983) (claim accrued when attorney notified clients of his mistake and they retained new counsel). *See also Dearborn Animal Clinic, P.A. v. Wilson*, 806 P.2d 997, 1006 (Kan. 1991) (although generally underlying action must be completed, where outcome does not affect the existence of damages, only the amount, claim accrues when client incurs fees defending action and discovers attorney's malpractice); *Grunwald v. Bronkesh*, 621 A.2d 459, 466 (N.J. 1993) (claim accrues when client learns of the malpractice and suffers some damages, not when appeal of the underlying case is complete).

As one court aptly stated in the context of a legal malpractice action,

> once a plaintiff becomes aware of his attorney's negligence and damage in the form of legal fees is incurred to ameliorate the impact of that negligence, he has suffered injury for purposes of the accrual of a legal claim. Uncertainty as to the total extent of the damages does not delay accrual of the claim itself.

Palisades, 816 P.2d at 963-64. The same rule should apply in Florida.

B. The district court's opinion violates the statute's plain language

The district court's opinion not only contradicts *Edwards* and other cases from this and other states; it contradicts the statute itself. The statute provides that "the period of limitations shall run from the time the cause of action is discovered or should have been discovered with the exercise of due diligence." § 95.11(4)(a), Fla. Stat. (1989). The plain wording of the statute requires that the limitations period begin when the client discovers the malpractice, regardless of when related third-party litigation concludes.

Courts should not add words to a statute. *See In re Order on Prosecution of Criminal Appeals*, 561 So. 2d 1130, 1137 (Fla. 1990). As this Court has said,

> It is a settled rule of statutory construction that unambiguous language is not subject to judicial construction, however wise it may seem to alter the plain language. . . . We trust that if the legislature did not intend the result mandated by the statute's plain language, the legislature itself will amend the statute at the next opportunity.

State v. Jett, 626 So. 2d 691, 693 (Fla. 1993). When construing statutes of limitations, courts generally will not write in exceptions when the legislature has not.

Fulton County Administrator v. Sullivan, __ So. 2d __, 22 Fla. L. Weekly S578, 78-79 (Fla. Sep. 25, 1997). The district court's opinion, holding that a cause of action does not accrue until related third-party litigation concludes, impermissibly engrafts language onto the statute.

This Court's decision in *Edwards v. Ford*, and other cases holding that the limitations period for transactional malpractice begins when the client discovers the malpractice, faithfully interpret the statute. The district court's opinion does not.

C. The district court's opinion will extend the statute of limitations into the indefinite future, creating uncertainty in corporate transactions and placing attorneys at a disadvantage in defending stale malpractice claims

The district court's holding that the limitations period begins only when related third-party litigation concludes will extend the limitations period into the indefinite future. Faded memories and purged files may prejudice an attorney's defense in such cases.

Many transactions today have long contract terms, and their performance may take many years. Breaches may not occur until late in the term -- many years after the attorney prepared the documents. Litigation resulting from those breaches

may also last several years. If a cause of action for malpractice does not accrue until such litigation is concluded, attorneys will be prejudiced by the lapse of time.

Statutes of limitations are designed to prevent the unfairness to defendants resulting from stale claims. *Nardone v. Reynolds,* 333 So. 2d 25 (Fla. 1976), *conformed to*, 538 F.2d 1131 (5th Cir. 1976). Their purpose is to protect against the risk of error that results from the difficulty of obtaining evidence of events that occurred long ago. *Baskerville-Donovan Engineers, Inc. v. Pensacola Executive House Condo. Ass'n,* 581 So. 2d 1301, 1303 (Fla. 1991). Statutes of limitation are fundamental to a well-ordered judicial system. *Board of Regents v. Tomanio*, 446 U.S. 478, 487 (1980).

Under the district court's holding, an attorney will be unable to know for many years whether representation in a transaction will result in a malpractice action. This creates uncertainty both for attorneys and for malpractice carriers. In the interim, files may be destroyed that would be relevant to the defense of such an action. Memories certainly will have faded, and witnesses may have disappeared. Revival of such claims would prejudice the attorney's defense. As one court has said,

> A system that would permit a plaintiff to commence a malpractice claim fifteen years after an attorney renders allegedly negligent advice is simply unacceptable, yet that result might very well occur, ... Such a potential outcome would frustrate the purposes of limitations periods: to protect agains the litigation of stale claims; to stimulate litigants to prosecute their claims diligently; and to penalize dilatoriness.

Grunwald, 621 A.2d at 466. *See also Gonzales*, 905 P.2d at 177 (limitations period should not be extended to impose potential liability on a transactional attorney extending many years beyond the drafting of the disputed documents).

The statute involved here, which incorporates the discovery rule, already liberally extends the limitations period by providing that the period does not begin until the malpractice is discovered. This period should not be extended even further by a holding that the period does not begin until related third-party litigation is concluded.

CONCLUSION

For the reasons stated, the district court's opinion should be reversed and the summary judgment in favor of the Petitioners should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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