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## **Gallagher Sharp Newsflash: Delayed Damages Do Not Toll Statute of Limitations for Professional Negligence**

Today, April 27, 2011, the Supreme Court of Ohio held that a cause of action for professional negligence against a property appraiser accrues when the negligent act is committed, not on the date the plaintiff suffers actual damages. The Court's decision in *Flagstar Bank, F.S.B. v. Airline Union's Mtge. Co.*, Case Nos. 2010-0508 & 2010-0511, 2011-Ohio-1961, will have a significant impact on professional negligence lawsuits because the Court has settled a conflict that had previously existed among Ohio's appellate courts over when the four-year statute of limitations contained in R.C. 2305.09(D) begins to run.

The Court's unanimous decision affirmed the lower court decisions that dismissed as untimely a lawsuit filed by a bank in 2008 against a property appraiser based on appraisals that were performed in 2001 and 2002. The bank alleged that the property appraisals were materially inaccurate and that the actual fair market value of each property was significantly less than the appraised value set by the real estate appraiser. The appraiser argued that the bank's claims for professional negligence were barred by the statute of limitations contained in R.C. 2305.09(D) because the bank's complaint was filed more than four years after the appraisals were performed. The bank took the position that the statute of limitations may be delayed until the bank suffered an actual loss, which in this case, did not occur until the properties were sold at foreclosure and there was a deficiency balance. Both the trial court and the First District Court of Appeals agreed that the bank's lawsuit was untimely. The Supreme Court of Ohio agreed to review the case to resolve the conflict among appellate districts about when the statute of limitations in R.C. 2305.09(D) for professional negligence claims begins to run.

In its decision, the Court continued to follow the rule of law established in a 1989 Supreme Court of Ohio decision, *Investors REIT One v. Jacobs* (1989), 46 Ohio St.3d 176, which held that claims of professional negligence brought against accountants accrue when the negligent act is committed. In following *Investors REIT One*, the Court also rejected any constitutional concerns about having the statute of limitations commence on the date that the negligent act is committed. In the end, the Court explained that to accept the position that the statute of limitations "may be delayed until some point in the future could lead to an unending statute of limitations." *Flagstar Bank* at ¶27.

The full opinion is available at  
<http://www.supremecourtfohio.gov/rod/docs/pdf/0/2011/2011-ohio-1961.pdf>.

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