ACCOUNTANT MALPRACTICE LIMITS ON EXPERT WITNESS AND ON EVIDENCE OF BORROWER'S BANKING RELATIONSHIP

An accountant was an expert witness for the plaintiff lender. The suit arose from the debt of a surgeon, a client of the defendant accounting firm, McGladrey. McGladrey was sued by Citibank, because of its audit services for the surgeon. The expert for Citibank was barred from reiterating opinions (outside his own expertise) of health care specialists with whom the accountant expert had consulted in formulating opinions. *Citibank v. McGladrey and Pullen, LLP*, 2011 IL App (1st) 102,427, at §19. Also, it was held that facts involved in Citibank's handling of the surgeon's investment account could be introduced as evidence relevant to the bank's contributory negligence on the loan. "The issue of whether (or not) the bank relied on accountant's audit in making the loan involved the bank's entire lending relationship with borrower." *Citibank*, at §27.

LEGAL MALPRACTICE-LAPSE OF THE STATUTE OF REPOSE

A legal malpractice claim was made in *Snyder v. Heidelberger* for a lawyer's lack of due care in drafting a quit claim deed to create a joint tenancy between a husband and wife, now widow, for their marital home. Six years after the quit claim deed was prepared, the widow's claim was barred, because the claim lapsed by the statue of repose. The legal malpractice statute of repose, to be triggered, did not depend on when the widow's step son sued to evict her from her husband's home. Unlike a statute of limitations, "A statute of repose begins to run when a specific event occurs, regardless of whether an action has accrued (with an injury)." *Snyder v. Heidelberger*, 2011 IL 111,052, at §10 "The period of repose in a legal malpractice case begins to run on the last date on which the attorney performs the work involved in the alleged negligence." *Snyder*, at §20

CONFIDENTIAL ATTORNEY-CLIENT BUSINESS COMMUNICATIONS WAIVER

The plaintiffs, limited partners, and the defendant, general partner, owned and operated shopping malls. The suit alleged defendant's breach of fiduciary duty. Because while conducting business the defendant general partner disclosed to the plaintiff limited partners *some* of defendant's attorney client communications, the privilege for all of his communications with his attorney on the same "subject matter" was waived. This is "subject matter waiver" of privilege. *Center Partners v. Growth Head GP*, 2011 IL App (1st) 110,381, at §16. Moreover, work product documents of defendant's attorney were outside the scope of the attorney's work-product doctrine and were discoverable, because they were prepared outside of litigation. *Center Partners*, at §22.

LIABILITY INSURANCE FOR ADVERTISING INJURY

Advertising injury liability coverage has been found not to cover anti-trust claims. The insured in *Rose Acre Farms* was denied coverage by the U.S. District Court in Indiana under the advertising injury coverage in a liability policy which had the current ISO coverage language, because the anti-trust complaint did not allege facts sufficient to implicate an advertising injury and because in any event an anti-trust violation is an intentional act excluded from coverage. The 7th Circuit in Chicago affirmed the District Court. *Rose Acre Farms, Inc. v. Columbia Casualty Company and National Fire Insurance Co. of Hartford,* No. 11-1599, U.S., 7th Cir, November 1, 2011, noted that the same result was reached of non-coverage for advertising injury in *Trailer Bridge Inc. v. Illinois National Insurance,* 2011 WL 4346579 (11th Cir. Sept. 19, 2011).

BUILDER'S RESIDENTIAL HOME WARRANTY- IMPLIED WARRANTY OF HABITABILITY BY A NON-VENDOR

"Our review of the supreme court's cases on this subject and our consideration of the public policy behind the implied warranty of habitability confirm that the warranty applies to builders of residential homes regardless of whether they are involved in the sale of the home. Because defendant's status as a builder rather than a builder-vendor does not preclude an action for breach of the implied warranty of habitability, the trial court erred by dismissing the implied warranty of habitability count in plaintiff's complaint." *1324 W. Pratt Condominium Association v. Platt Construction Group, Inc.*, 404 Ill.App.3d 611, 617-18, (1st Dist., 2010. Justice Theis, who is the author of this appellate opinion, now sits on the Illinois Supreme Court.

BUILDER IS LIABLE FOR 10 YEARS INSTEAD OF FOR ONLY 4 YEARS- INDEMNITY AGREEMENT

Five years after Fordham completed construction of a 50-story high rise on Fordham's property, Water Tower, which owned a property across the street, sued Fordham. Water Tower claimed that Fordham breached a pre-construction agreement to indemnify Water Tower for losses for acts in Fordham's capacity as supervisor or manager of construction. Water Tower claimed that, because of the construction activity, it was impossible during construction for Water Tower to lease commercial space in its building across the street. The 10 year statute of limitations for actions on written contracts rather than 4 year statute of limitations on construction applied. The case finds that Fordham's liability emanated not from construction, but from the written indemnification agreement, and was not related to Fordham's capacity as supervisor or manager of the construction. *Water Tower Realty Company v. Fordham, 25 E. Superior,* 404 Ill.App.3d 658, at 665 (1st Dist., 2010).