

LGR Realty, Inc. v. Frank and London Ins. Agency
2018-Ohio-334
Ohio Supreme Court

David J. Oberly secured a significant victory in the Ohio Supreme Court in which the state's highest court clarified that the statute of limitations in insurance agent negligence and misrepresentation actions accrues on the date the policy is issued, thereby rejecting the delayed damages rule in insurance agent/agency professional liability lawsuits.

In that case, David's insurance agency client procured an E&O policy for a real estate agency client. After the real estate agency's claim for defense and indemnity was denied on the basis of an exclusion contained in the policy, the real estate agency filed suit against the insurance agency for allegedly failing to procure an appropriate professional liability insurance policy and negligently misrepresenting the coverage contained in the policy. On appeal, the real estate agency argued that the delayed-damages rule—which delays the accrual of a cause of action where the wrongful conduct is not immediately harmful until the actual injury or damage occurs—applied to the insured's cause of action alleging negligence related to the procurement of the professional liability policy. The Ohio Supreme Court rejected the real estate agency's argument, agreeing instead with the position taken by David that the delayed-damages rule did not apply and that such a cause of action accrues on the date the policy is issued. As such, the Court held that the delayed damages rule does not apply to a cause of action alleging negligent procurement of a professional liability insurance policy or negligent misrepresentation of the terms of the policy when the policy at issue contains a provision specifically excluding the type of claim that the insured alleges it believed was covered by the policy. Therefore, the four-year statute of limitations period began to run when the insurance agency issued the insurance policy, and not when the insured's claim for a defense and indemnity was denied.