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Mailing, Not Receipt, Determines Refund Time Limitations

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were entitled to assume the boat they rented was free from defects. Accordingly, the majority affirmed the district court's holding that the Diplomat was strictly liable for injuries to Mrs. Amoroso resulting from defects in a sailboat she rented from Atlantic. Thus, the Florida Supreme Court extended the application of strict liability to commercial lease transactions, subject to the limitations set forth in the opinion.

Dissenting justices question strict liability

Justices McDonald and Overton concurred in part and dissented in part with the majority's opinion. The justices concurred with the majority's decision insofar as it held the Diplomat liable under the theories of implied warranty of fitness and negligence, but disagreed with the application of strict liability to the Diplomat. They contended that strict liability should not apply to the Diplomat because the sailboat rental business was only an incidental part of the hotel's business. Furthermore, the two justices felt that the majority's application of strict liability to the Diplomat was unnecessary because the theories of implied warranty of fitness and negligence provide adequate protection to the public in such cases.

—Christy Thouvenot

Mailing, not receipt, determines refund time limitations

In ***Rosser v. United States***, 9 F.2d 1519 (11th Cir. 1993), the U.S. Court of Appeals for the 11th Circuit held that the statute of limitations for a tax refund claim expires two years from the mailing of a disallowance notice. Reversing the district court, the 11th Circuit declared the plain language of 26 U.S.C. §6532(a)(1) to mean that the statute of limitations for an income tax dispute runs from the date a disallowance notice is mailed, regardless of whether the taxpayer actually receives such notice. The court further maintained that a second disallowance notice does not equitably estop the Internal Revenue Service (IRS) from asserting the statute of limitations as a bar to a taxpayer's recovery.

Taxpayer Claims Refunds for Charity Deductions

Robert G. Rosser's federal income tax returns for the years 1979 through 1982 claimed charitable deductions for art objects he donated to the Birmingham Museum of Art. The IRS disallowed portions of those charitable deductions and, therefore, found deficiencies in Rosser's tax liability for those years. On April 5, 1985, Rosser paid his deficiencies for 1979, 1980, and 1981. On December 30, 1986, Rosser paid his deficiencies for 1982 and 1983.

On March 18, 1987, Rosser filed timely refund claims for 1980 and 1981. On April 1, 1987, Rosser filed refund requests for 1979, 1982, and 1983. On January 5, 1988, the IRS responded to Rosser's refund claims by sending to him via certified mail notices of disallowance for each of the years 1979 through 1983. Rosser denied receipt of these notices and submitted an affidavit attesting to his failure to receive them.

On December 30, 1988, Rosser refiled his petitions for refunds for 1979 through 1983, contending that he had not received the disallowance notices from the IRS. The IRS responded by mailing Rosser letters on January 17, 1989, which stated that it would look into his 1982 and 1983 claims and answer him "more fully in 60 days." On January 23, 1989, the IRS issued Rosser a notice of disallowance for 1979, 1980, and 1981. The notice explained that his claims were not timely filed as required by 26 U.S.C. Section 6511 and advised Rosser to contact the IRS with questions.

On January 18, 1991, Rosser filed a refund suit, arguing that the statute of limitations did not begin to run upon mailing of the initial notices of disallowance on January 5, 1988. Rosser argued that the Section 6511 statute of limitations should not begin to run *until* the taxpayer actually receives the notice. Rosser contended that he reasonably relied on the January 17 and January 23, 1989, letters he received from the IRS. In contrast, the IRS argued that its letter mailed January 5, 1988, constituted adequate notice to begin the statute of limitations period, and that its January 17, 1989, letter had no effect on the limitations period.

The district court determined that the statute of limitations did not bar Rosser's suit, and pursuant to the parties' stipulation as to the relevant amount in taxes, entered judgment in Rosser's favor.

Eleventh Circuit rejects taxpayer's argument that notice receipt is required

On appeal, the IRS contended that both the plain language of Section 6532(a)(1) and congressional intent conflict with Rosser's interpretation of the statute. Thus, the 11th Circuit first examined the language of Section 6532(a)(1) which states as follows:

> [n]o suit or proceeding...for the recovery of any internal revenue tax...shall be begun...after the expiration of two years from the date of mailing by certified mail or registered mail by the Secretary to the taxpayer of a notice of disallowance of the part of the claim to which suit or proceeding relates.

The court specifically noted that the plain language of Section 6532(a)(1) indicates that the statutory period begins to run from the date of the mailing, irrespective of the taxpayer's receipt of the notice.

The 11th Circuit next scrutinized the legislative history of Section 6532(a)(1), and determined that the purpose of the statute was to eliminate uncertainty about when the statute of limitations begins to run in cases such as Rosser's. The court reasoned that if the limitations period did not begin to run until the taxpayer actually received notice, the date triggering the limitations period would remain an uncertainty, and thus inconsistent with Section 6532(a)(1)'s purpose.

Finally, the court observed the practical considerations of the two-year statute of limitations under Section 6532(a)(1). Requiring the IRS to prove a taxpayer's actual receipt of a disallowance notice in order to trigger the statute of limitations would be impractical. In addition, giving taxpayers the opportunity to deny receipt of disallowance notices would further delay the statute of limitations period.

IRS could assert limitations statute

The 11th Circuit also held that the district court erred in relying on cases applying equitable estoppel against the federal government. The district court found that the actions the IRS took on Rosser's refiled claims tolled the statute of limitations, and that the January 23, 1989, notice of disallowance the IRS sent Rosser in response to his refiled claims "stated on its face without reservation or condition that plaintiff had two years from [the date the second notice was mailed] to file suit." The 11th Circuit, however, rejected the district court's conclusion. The appellate court posited that the January 23, 1989, notice contained no language which could have led Rosser to believe that he had two years from the date of this notice to file his claim, nor did this notice contain any other language which could have misled Rosser. Finally, the 11th Circuit found no other bases for the lower court to have employed the doctrine of equitable estoppel and, therefore, denied its application.

—Mona Dajani

Texas Supreme Court sets punitive damages standards

In ***Transportation Insurance Co. v. Moriel***, 1994 WL 246568 (Tex.), the Supreme Court of Texas clarified standards governing the imposition of punitive damages awards in bad faith insurance cases. The court held that insurers will be liable for punitive damages only if bad faith is accompanied by gross negligence. In addition, the court explained what a plaintiff must show to establish gross negligence, and announced new procedural standards for punitive damages awards. The court required courts to separate the determination of the amount of punitive damages from the other issues at trial, and mandated that courts of appeals which review the factual sufficiency of punitive damages awards explain why the evidence does or does not support the award.

Insurance carrier delays paying bills

In March 1986, Juan Moriel was injured when a stack of countertops fell on him. He sustained fractures of the wrist, pelvis, and ribs. Transportation Insurance Company (Transportation), Moriel's employer's workers' compensation carrier, paid his hospitalization costs. Several days after his discharge from the hospital, Moriel experienced periods in which he was unable to move his leg. He returned to the hospital for testing. Six weeks following his accident, Moriel discovered he was impotent. After tests conducted in El Paso revealed no physical cause for the impotence and hormone therapy failed to cure the problem, doctors advised Moriel to undergo additional testing at a Houston hospital. Doctors in Houston found Moriel's impotence to be at least partially physical. They also recommended that Moriel seek counseling for emotional problems. Moriel did so and eventually was able to resume sexual relations with his wife.

Transportation delayed paying four of Moriel's bills. The company received a $3,155 bill for Moriel's Houston tests in November 1986. Although Transportation had authorized the tests in advance, it did not pay Moriel's bill for more than two years, on the ground that Moriel's impotence was unrelated to his work injury. Second, Transportation delayed paying Moriel's $2,075 psychiatric counseling bill for more than a year, claiming that it had never received the psychiatrist's report. Third, the company delayed paying a $382.25 bill for outpatient testing. It paid only after the hospital filed a collection action against Moriel. Finally, Transportation did not pay the bill for the El Paso tests until after Moriel filed his lawsuit. Evidence indicated, however, that because the El Paso company had mailed the bill to the wrong address, Transportation did not receive it until after the lawsuit commenced.

While he was undergoing testing and treatment, Moriel filed a workers' compensation claim against Transportation. In July 1987, he received an award of $30,022.77 from the Industrial Accident Board. When Transportation appealed, Moriel counterclaimed for additional compensation, unpaid medical bills, and bad faith claims practices. In July 1988, Moriel and Transportation settled the workers' compensation claim.

At the trial on the bad faith claim, the jury found that Transportation had no reasonable basis to delay paying Moriel's medical bills, and that Transportation had "acted with heedless and reckless disregard" of Moriel's rights. The jury awarded Moriel $1,000 in actual damages, $100,000 in mental anguish damages, and $1 million in punitive damages. The trial court entered judgment on the verdict, and denied Transportation's motions for judgment notwithstanding the verdict, remittitur,