Rel: November 6, 2026

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2026-2027

SC-2025-0419

Maynard Nexsen, PC

v.

Cadence Bank

Appeal from Jefferson Circuit Court
(CV-24-902787)

SELLERS, Justice.[1]

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[1]This case was originally assigned to another Justice on this Court. It was reassigned to Justice Sellers on August 27, 2026.

In this permissive interlocutory appeal filed pursuant to Rule 5, Ala. R. App. P., Maynard Nexsen, PC ("Maynard"), appeals from a judgment of the Jefferson Circuit Court denying Maynard's motion to dismiss or for a summary judgment in a legal-malpractice action commenced against it by Cadence Bank ("Cadence"). According to Maynard, Cadence's claims are barred by the statute of limitations set forth in the Alabama Legal Services Liability Act ("the ALSLA"), Ala. Code § 6-5-570 et seq. We answer the questions certified by the trial court, reverse the trial court's judgment, and direct the trial court to grant Maynard's motion.

The trial court certified the following questions:

> "Are Cadence's claims against Maynard time-barred under the [ALSLA]? More specifically, when did Cadence's claims against Maynard accrue under the [ALSLA] so as to trigger the [ALSLA's] two year limitations period, and if the claim accrued more than two years before Cadence filed this lawsuit, does the [ALSLA's] six month ameliorative period or some other tolling or legal princip[le] save Cadence's claims against Maynard from being time-barred in consideration of the information contained in Maynard's evidentiary submissions?"

In October 2020, Cadence engaged Maynard to provide legal services to Cadence in connection with an $8 million loan Cadence proposed to make to Assure Holding Company ("AHC"). Adams and

Reese, LLP, served as AHC's counsel. The loan closing took place on November 18, 2020. To secure repayment of the loan, AHC and its subsidiaries granted Cadence a security interest in bank accounts and other assets.

One of those subsidiaries was property and casualty insurer American Insurance Company ("AIC"). AIC insured properties in various states, including Louisiana. In August 2021, a hurricane caused substantial property damage in Louisiana. Determining that AIC did not have the capital to pay insurance claims that were made in the wake of the hurricane, the Louisiana Insurance Commissioner ("the LIC") sought to place AIC into receivership. Among other things, the LIC sought an order enjoining the enforcement of all liens on AIC's assets and sought the right to terminate or modify contracts entered into by AIC. In January 2022, a Louisiana court granted the LIC's request, placed AIC into receivership, and enjoined creditors, including Cadence, from enforcing liens on AIC's assets.

At some point, the LIC took the position that Cadence's claimed security interest in AIC's assets is invalid, or at least not entitled to priority, because certain government authorities had not approved the

loan from Cadence. Emails from a Cadence representative dated March 16, 2022, indicate that Cadence was made aware of the LIC's position regarding Cadence's security interest at least by that date.[2]

After the March 2022 emails were sent, Cadence promptly intervened in the receivership action in Louisiana, specifically to protect its security interest in AIC's assets. Two days later, on March 25, 2022, Cadence commenced a separate action against the LIC, also in an effort to protect its security interest. Cadence's action against the LIC eventually was consolidated with the LIC's receivership action. In June 2022, the Louisiana court entered a consent decree whereby approximately $6.2 million of AIC's assets was set aside pending resolution of the dispute between the LIC and Cadence regarding Cadence's security interest.

On January 13, 2023, the LIC filed what has been referred to as a counterclaim against Cadence, pursuant to which the LIC formally pleaded that Cadence had failed to acquire necessary regulatory approval

[2]Unredacted versions of the referenced emails were filed with this Court under seal. Although, according to Cadence, the LIC has never formally pleaded that Cadence does not hold a priority security interest in AIC's assets, the emails and other materials in the record make clear that the LIC had taken that position.

of the loan to AHC and, in addition, that Cadence should be held responsible for insurance claims that AIC was unable to pay. With respect to that particular claim, the LIC has theorized that, had regulatory approval been sought for the loan from Cadence to AHC, the loan would not have been approved, the appropriate authorities would have been made aware of AIC's financial condition, and AIC would have been placed in receivership sooner. This, the LIC has suggested, would have mitigated AIC's inability to pay the insurance claims resulting from hurricane damage.

On July 16, 2024, Cadence commenced its legal-malpractice action against Maynard, alleging in general that Maynard should have advised Cadence to seek regulatory approval of the loan to AHC and the security interest granted by its subsidiaries. Cadence later amended its complaint to allege that Maynard fraudulently suppressed its alleged inability to handle the insurance-related loan transaction. The trial court denied Maynard's motion for a dismissal or for a summary judgment, and Maynard filed this appeal.

Maynard's dispositive motion in the trial court was styled as a motion to dismiss or, alternatively, for a summary judgment. It appears

that the parties submitted materials outside the complaint for the trial court's consideration in ruling on Maynard's motion. Among those materials are the above-referenced emails relevant to the timing of Cadence's acquisition of knowledge of the LIC's position regarding Cadence's failure to obtain regulatory approval of the loan transaction. The parties do not expressly discuss whether the trial court treated Maynard's dispositive motion as a motion to dismiss or as a motion for a summary judgment. See generally Rule 12(b), Ala. R. Civ. P. ("If, on a motion asserting … failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment …."). The trial court did not expressly exclude any materials submitted outside the complaint, and both parties discuss the referenced emails in their respective appellate briefs to this Court, although they differ on their interpretation of those emails. Part of the trial court's questions certified under Rule 5 asks if Cadence's claims are subject to tolling principles "in consideration of the information contained in Maynard's evidentiary submissions." Based on everything before us, in answering the questions certified by the trial court for this permissive

appeal, we consider the materials submitted in connection with Maynard's motion.

Section 6-5-574(a), Ala. Code 1975, part of the ALSLA, provides:

> "(a) All legal service liability actions against a legal service provider must be commenced within two years after the act or omission or failure giving rise to the claim, and not afterwards; provided, that if the cause of action is not discovered and could not reasonably have been discovered within such period, then the action may be commenced within six months from the date of such discovery or the date of discovery of facts which would reasonably lead to such discovery, whichever is earlier; provided, further, that in no event may the action be commenced more than four years after such act or omission or failure; except, that an act or omission or failure giving rise to a claim which occurred before August 1, 1987, shall not in any event be barred until the expiration of one year from such date."

There is uncertainty in our caselaw with respect to the statute of limitations in actions brought under the ALSLA. Specifically, the Court has not settled on a clear standard as to when the limitations period begins to run. According to the Court in Fox v. Hughston, 382 So. 3d 1207, 1212 (Ala. 2023):

> "[T]here is a split of authority in our caselaw concerning when the statute-of-limitations period for a legal-malpractice action will begin to run. On the one hand, our caselaw has applied the 'damage' approach, under which the limitations period begins to run from the date on which the client bringing the legal-malpractice action first sustained an injury or damage. On the other hand, our caselaw also has applied the

> 'occurrence' approach, under which the limitations period begins to run from the date on which the act or omission giving rise to the claim occurred and not when the client first suffered damage."[3]

The Court in Fox concluded that, under either the occurrence rule or the damage rule, the limitations period applicable to the plaintiff's ALSLA claim in Fox had expired. See also Ex parte Seabol, 782 So. 2d 212, 214 (Ala. 2000) ("Under § 6-5-574, 'a legal-malpractice cause of action accrues, and the statute-of-limitations period begins to run, when "the act or omission or failure giving rise to the claim" occurs, and not when the client first suffers actual damage.' Ex parte Panell, 756 So. 2d 862, 868 (Ala. 1999)."); Floyd v. Massey & Stotser, P.C., 807 So. 2d 508 (Ala. 2001) (applying both the occurrence rule and the damage rule in concluding that the limitations period had expired); Dennis v. Northcutt, 887 So. 2d 219 (Ala. 2004) (plurality opinion) (applying the occurrence rule); Denbo v. DeBray, 968 So. 2d 983 (Ala. 2006) (applying both the occurrence rule and the damage rule in concluding that the limitations

[3]The "damage" rule might also be referred to as the "accrual" rule. See Fox v. Hughston, 382 So. 3d 1207, 1218 (Ala. 2023) (Parker, C.J., concurring in part and concurring in the result) (noting that the two terms have been used interchangeably).

period had expired); Coilplus-Alabama, Inc. v. Vann, 53 So. 3d 898 (Ala. 2010) (same).

"To discern the legislative intent, the Court must first look to the language of the statute. If, giving the statutory language its plain and ordinary meaning, we conclude that the language is unambiguous, there is no room for judicial construction." City of Bessemer v. McClain, 957 So. 2d 1061, 1074 (Ala. 2006). The language of 6-5-574(a) is clear that a claim under the ALSLA must be commenced "within two years after the act or omission or failure giving rise to the claim." In Fox, supra, two Justices wrote specially to urge the Court to adopt the occurrence rule as faithfully applying the plain language of § 6-5-574(a). 382 So. 3d at 1218 (Mitchell, J., concurring in the result) ("[T]he Court should clarify this area of the law and definitively hold that the occurrence approach, not the damage approach, is required by the statute's text."); id. (Parker, C.J., concurring in part and concurring in the result) (noting that the damage rule "directly contradicts" the language in § 6-5-574(a) and stating that "this Court should establish, without further delay, that the occurrence rule is the only correct interpretation of the two-year provision in § 6-5-547(a)"). See also Ex parte Panell, 756 So. 2d 862, 865 (Ala. 1999)

(plurality opinion) ("Despite the clear language of § 6-5-574(a), this Court in Michael v. Beasley, 583 So. 2d 245, 252 (Ala. 1991), held that the statute-of-limitations period established by § 6-5-574(a) begins to run 'from the date of the accrual of a cause of action and not from the date of the occurrence of the act or omission.'").

Because the statutory language in § 6-5-574(a) is clear, and because it is not this Court's responsibility to rewrite that language, Ex parte Carlton, 867 So. 2d 332, 338 (Ala. 2003), we now hold that the limitations period for a cause of action under the ALSLA begins to run upon the occurrence of "the act or omission or failure giving rise to the claim." Authority conflicting with this holding is overruled.

As noted in one of the special writings in Fox, "[i]n some cases, the occurrence rule that is required by the plain meaning of the two-year provision may have seemingly harsh or unfair results." 382 So. 3d at 1219 (Parker, C.J., concurring in part and concurring in the result). "But it is not this Court's role 'to displace the legislature by amending statutes to make them express what we think the legislature should have done. Nor is it this Court's role to assume the legislative prerogative to correct

defective legislation ....' Siegelman v. Chase Manhattan Bank (USA), Nat'l Ass'n, 575 So. 2d 1041, 1051 (Ala. 1991)." Id.

Applying the occurrence rule in this case, we conclude that Cadence's negligence-based claim against Maynard is barred by the statute of limitations.[4] Cadence's allegations of legal malpractice stem from Maynard's alleged failure to advise Cadence of the necessity of regulatory approval of the loan to AHC and AIC's accompanying pledge of its assets as collateral securing repayment of the loan.

In November 2020, a legal opinion regarding the proposed loan, which had been drafted by Adams and Reese with what Cadence describes as "Maynard's review and approval," was provided to Cadence. Cadence's brief at 4. The opinion was limited to advice concerning Alabama law and did not advise obtaining regulatory approval of the loan. According to Cadence, it relied on the legal opinion in proceeding with the loan closing, which occurred on November 18, 2020. Although it may not be clear exactly when Maynard first allegedly violated a duty to recommend seeking regulatory approval of the loan, the "omission or

[4]Cadence's fraud-based claim is discussed separately below.

failure giving rise to [Cadence's] claim" necessarily occurred when the issuance of the opinion letter facilitated the loan closing in November 2020. Cadence did not commence its legal-malpractice action until July 2024.[5]

For its part, Cadence draws a distinction between the alleged (or, according to Cadence, "potential") invalidity of its security interest in AIC's assets and the LIC's assertion that Cadence should be held responsible for the insurance claims AIC is unable to pay. But § 6-5-574(a) states that the limitations period begins to run upon the act or omission complained of, hence the applicability of the "occurrence" rule and not the "damage" rule. All of Cadence's damage stems from Maynard's alleged violation of a duty to advise Cadence that it needed to seek regulatory approval of the loan to AHC. And, although we endorse the occurrence rule in construing § 6-5-574(a), we note that, even in cases applying traditional notions of damage and accrual of causes of action, the Court has held that the limitations period begins to run when the

[5]Although there is no tolling agreement in the record on appeal, the parties acknowledge that they entered into a tolling agreement that tolled the statute of limitations from March 3, 2023, through the filing of Cadence's ALSLA complaint. By that point, however, the limitations period had expired.

first legal injury occurs, regardless of whether the full amount of damage has manifested:

> "The limitations period begins to run when the plaintiff first suffers 'legal injury,' not when the plaintiff may later pay damages or suffer some compounding of the original injury. Michael v. Beasley, 583 So. 2d 245 (Ala. 1991). In a breach of contract action, for example, the limitations period runs from the time the contract is broken, although substantial damage or loss from the breach is not sustained until afterward. Stephens v. Creel, 429 So. 2d 278 (Ala. 1983). Even if the plaintiff is ignorant of the injury at the time (except in fraud cases), the limitations period begins to run. Garrett v. Raytheon Co., 368 So. 2d 516 (Ala. 1979)."

Mississippi Valley Title Ins. Co. v. Hooper, 707 So. 2d 209, 213 (Ala. 1997). Moreover, specifically, there are cases involving transactions that close in reliance on allegedly faulty legal advice, that suggest that legal injury first occurs upon the closing of the transaction. See, e.g. Coilplus-Alabama, 53 So. 3d at 906 (holding that the plaintiff was damaged when it closed on a bond issue in reliance on an incorrect legal opinion regarding the tax-exempt status of the issued bonds); Sirote & Permutt, P.C. v. Bennett, 776 So. 2d 40, 46 (Ala. 2000) (holding that the plaintiffs in a financing transaction were damaged when they closed on the purchase of "certificates of participation" in reliance on an allegedly incorrect legal opinion that suggested the certificates were more valuable

than they actually were even though, "at the time of purchase, the plaintiffs may not have known that the certificates were less valuable"); Mississippi Valley Title Ins. Co., 707 So. 2d at 213 (holding that a title insurer first incurred legal injury when the insurer's attorney issued title-insurance policies to mortgagees based on his incorrect certification that the mortgagees would have priority liens on parcels of real property, and not later when the insurer settled the mortgagees' claims that had been made under the title policies); Ladner v. Inge, 603 So. 2d 1012, 1015 (Ala. 1992) (holding that the plaintiff in a legal-malpractice action was damaged when she accepted unsecured promissory notes in exchange for deeds to property after her attorney failed to advise her of the benefit of obtaining mortgages to secure repayment of the notes because unsecured notes are "less valuable" in that they are vulnerable to the priority claims of other creditors and are less marketable than secured debt); Pearce v. Schrimsher, 583 So. 2d 253, 254 (Ala. 1991) (holding that the plaintiffs were damaged when they closed on a real-estate transaction in reliance on an erroneous title opinion provided by their attorney).

Cadence also relies on the provision in § 6-5-574(a) granting plaintiffs an additional six months to file an ALSLA claim "if the cause

of action is not discovered and could not reasonably have been discovered within [two years of the act or omission or failure giving rise to the claim]." In such cases, "the action may be commenced within six months from the date of such discovery [of the cause of action] or the date of discovery of facts which would reasonably lead to such discovery, whichever is earlier." Id. Cadence's emails in March 2022 show Cadence's knowledge of the LIC's position that Cadence failed to obtain regulatory approval of the loan to AHC, which occurred within the applicable two-year limitations period. As Maynard puts it in its brief to this Court, "if Cadence's claims could have been reasonably discovered during the two-year period … then the six-month period 'does not come into play.'" Maynard's brief at 45. See Wesson v. McCleave, Roberts, Shields & Greene, P.C., 810 So. 2d 652, 658 (Ala. 2001) (affirming dismissal of claims under the ALSLA when the plaintiff had information "well within the two-year limitations period" that reasonably could have led to the discovery of his claims).

According to Cadence, it acquired the relevant knowledge, at the earliest, when the LIC filed its counterclaim in January 2023. Cadence relies on the fact that the LIC had not formally pleaded that Cadence's

security interest in AIC's assets was invalid at the time of the March 2022 emails. In fact, Cadence stresses that, although the LIC asserted in its January 2023 counterclaim that Cadence should be held liable for unpaid insurance claims, the LIC has never expressly pleaded that Cadence's security interest in AHC's assets is "invalid." According to Cadence, there is only the "potential" that the validity of its security interest will be challenged. But none of this changes the fact that the LIC had earlier notified Cadence of the LIC's position regarding the failure to obtain regulatory approval of the loan transaction. And, in fact, the March 2022 emails specifically reference the LIC's position that Cadence's security interest is indeed "invalid." Moreover, when Cadence intervened in the LIC's receivership action involving AIC, Cadence specifically alleged that the LIC was proceeding as if Cadence did not hold a valid security interest in AIC's assets. The validity of the priority of Cadence's security interest is directly related to obtaining (or, in this case, failing to obtain) regulatory approval of the loan. Since Cadence became aware of that defect in the loan within the two-year limitations

period, Cadence's claims are not saved by the six-month ameliorative provision in § 6-5-574(a).[6]

In sum, with respect to Cadence's negligence-based malpractice claim, the omission or failure giving rise to that claim occurred when the legal opinion provided to Cadence culminated in the loan closing in November 2020. The limitations period began to run at that point, and Cadence obtained knowledge of its cause of action within two years of the closing. Cadence commenced its action against Maynard more than two years after the closing. Thus, Cadence's negligence-based claim is barred by the statute of limitations.

Cadence argues that its fraud-based claim in particular is not time-barred. We disagree. The day before the hearing on Maynard's motion to dismiss or for a summary judgment, Cadence amended its complaint to raise a claim alleging fraudulent suppression. According to the

[6]Cadence also claims that the consent order entered in AIC's receivership action, whereby funds were set aside pending resolution of the LIC's and Cadence's dispute over Cadence's security interest, shows that Cadence's security interest has not been deemed invalid. But, again, it was clear in March 2022 that the LIC challenged that interest. If anything, the preservation of AIC's assets pending resolution of the dispute bolsters the fact that Cadence had early notice of the problems created by the failure to obtain regulatory approval of the loan to AHC.

amended complaint, Maynard failed to disclose to Cadence that the attorneys responsible for advising Cadence with respect to the loan to AHC "lacked the requisite insurance experience to handle a loan to an insurance holding company and its subsidiaries" and that Maynard's attorneys "did not review, analyze, and determine whether any laws of Alabama, [the District of Columbia] or Louisiana applied to the loan transaction, including any potential requirement as to whether an official of those regulatory entities must give approval to the loan transaction."

Cadence avers that § 6-2-3, Ala. Code 1975, applies to save its fraud-based claim. That Code section provides that, for purposes of the statute of limitations, a fraud claim "must not be considered as having accrued until the discovery by the aggrieved party of the fact constituting the fraud." After that discovery, a plaintiff has two years to commence an action based on the fraud. Id. The ALSLA makes § 6-2-3 applicable in legal-malpractice claims. See § 6-5-574(b) (incorporating § 6-2-3 and other "existing provisions of law relating to the computation of statutory periods of limitations for the commencement of actions").

It is incumbent upon the party claiming the benefit of § 6-2-3 to show that his or her fraud claim falls within its savings provision. Miller

v. Mobile Cnty. Bd. of Health, 409 So. 2d 420, 422 (Ala. 1981) (plurality opinion) (noting that a complaint must "show that [the plaintiff] falls within the savings clause of § 6-2-3"). Plaintiffs alleging fraud must do so "'with particularity.'" Id. (quoting Rule 9(b), Ala. R. Civ. P.). See also Ex parte Abbott Lab'ys, 342 So. 3d 186, 197-98 (Ala. 2021) (concluding that a fraud claim was barred by the statute of limitations because the plaintiff's complaint provided no details of how the defendant concealed its alleged misconduct); Patel v. Shah, 295 So. 3d 659, 667 (Ala. 2019) (plurality opinion) ("'[T]he burden is upon he who claims the benefit of § 6-2-3 to show that he comes within it.' Amason v. First State Bank of Lineville, 369 So. 2d 547, 550 (Ala. 1979). To make that showing in opposition to a defendant's summary-judgment motion, the plaintiff must submit evidence indicating (1) how and when he discovered the facts of the claim, (2) what prevented him from discovering those facts before the limitations period ended, and (3) why, based on his knowledge during the limitations period, he had no reason to conduct an inquiry that would have led him to those facts. See 369 So. 2d at 550.").

In Miller, the Court affirmed the dismissal of a cause of action alleging fraud because the complaint "fail[ed] to allege any of the facts or

circumstances by which the [defendants] concealed the cause of action or injury" and "what prevented [the plaintiffs] from discovering facts surrounding the injury." 409 So. 2d at 422. Instead, the plaintiffs in Miller made "only generalized allegations to support their claim for fraudulent concealment." Id. See also Ex parte Abbott Lab'ys,, 342 So. 3d at 197 (noting that, for § 6-2-3 to apply, a complaint must aver the time and circumstances regarding the discovery of the alleged fraud, the facts showing how the defendant concealed the cause of action or injury, and the facts showing how the plaintiff was prevented from discovering the facts surrounding the injury). The complaint in Abbott failed to provide "details of fraud by [the defendant] that prevented [the plaintiff] from discovering [the defendant's] alleged misconduct." Id. (emphasis omitted).

Cadence's amended complaint sets out "generalized allegations" of suppression without sufficiently explaining how and when Cadence learned that Maynard attorneys concealed their alleged lack of expertise or why Cadence could not have discovered that alleged lack of expertise earlier. The amended complaint simply avers that Cadence "could not have known within the applicable statute of limitations" that Maynard

allegedly was not competent to handle the transaction and that "only during discovery in this action was the complete lack of experience revealed." And, as Maynard puts it, Cadence's complaint does not allege facts showing that "Maynard did anything specific to conceal the nature of [the closing attorney's] expertise or did anything specific to prevent Cadence from discovering its supposed cause of action during the [ALSLA] two-year limitations period." Maynard's brief at 53 (emphasis omitted).

The two-year limitations period under the ALSLA begins to run upon the occurrence of the act, omission, or failure giving rise to a claim under the ALSLA. As explained above, Cadence's claims are barred by the statute of limitations, and they are not saved by any ameliorative period or tolling principle. Accordingly, we reverse the trial court's judgment and remand the matter for that court to enter a judgment in Maynard's favor.

REVERSED AND REMANDED.

Mendheim, McCool, and Parker, JJ., concur.

Bryan, J., concurs in the result, with opinion, which Stewart, C.J., joins.

Shaw, Wise, and Cook, JJ., recuse themselves.

BRYAN, Justice (concurring in the result).

I concur in the result of the Court's decision to reverse the judgment of the Jefferson Circuit Court and to remand this cause for further proceedings. In doing so, the Court's decision overrules "[a]uthority conflicting with" its holding that "the limitations period for a cause of action under the [Alabama Legal Services Liability Act, Ala. Code 1975, § 6-5-570 et. seq.,] begins to run upon the occurrence of 'the act or omission or failure giving rise to the claim.'" ____ So. 3d at ____.

However, Maynard Nexsen, PC, the appellant, has not asked this Court to overrule any of our prior decisions in this case. See Maynard Nexsen's brief at 44 ("Under either the damages test or the occurrence test, the … two-year limitations period expired on November 18, 2022." (emphasis added)).

Likewise, Cadence Bank, the appellee, has not asked us to overrule any precedent but contends that "the damages test is the correct test to determine when its legal malpractice claim against [Maynard Nexsen] accrued." See Cadence's brief at 45. However, the main opinion concludes that Cadence's claims are barred even under the damages test. See Maynard, ____ So. 3d at ____ ("[E]ven in cases applying traditional

notions of damage and accrual of causes of action, the Court has held that the limitations period begins to run when the first legal injury occurs, regardless of whether the full amount of damage has manifested."), and ____ So. 3d at ____ ("Moreover, specifically, there are cases involving transactions that close in reliance on allegedly faulty legal advice that suggest that legal injury first occurs upon the closing of the transaction.").

"[T]his Court has long recognized a disinclination to overrule existing caselaw in the absence of either a specific request to do so or an adequate argument asking that we do so." Ex parte McKinney, 87 So. 3d 502, 509 n.7 (Ala. 2011). Because we have not been asked to overrule any of this Court's prior decisions, I would decline to do so in this case. Accordingly, I concur in the result.

Stewart, C.J. concurs.