2016 IL App (1st) 15-0549-U

THIRD DIVISION
March 9, 2016

No. 1-15-0549

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

VECESLAV GRAMA, Assignee of GT CARGO, INC., and TOMAS GINTILA,	)	Appeal from the Circuit Court of Cook County, Illinois, County Department,
Plaintiff-Appellant	)	Law Division.
v.	)	No. 2014 L 10171
TRANDEL INSURANCE AGENCY,	)	
Defendant-Appellee.	)	The Honorable William E. Gomolinski, Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Mason and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err in dismissing the plaintiff's two count complaint for negligent procurement of insurance and consumer fraud as barred by the two-year omnibus statute of limitations for insurance brokers (735 ILCS 5/13-214.4 (West 2010)). The record reflects that the plaintiff knew or reasonably should have known of the claims against the insurance broker no later than the date he filed his personal injury action against his employer, wherein he alleged that the employer failed to provide him with the proper insurance.

¶ 2 The plaintiff, Veceslav Grama (hereinafter Grama), a former truck driver for GT Cargo Inc.,

(hereinafter GT Cargo), owned by Tomas Gintila (hereinafter Gintila), as assignee of GT Cargo and Gintila, appeals from the circuit court's order dismissing his two-count complaint for consumer fraud and negligent procurement of insurance against the defendant, Trandel Insurance Agency (hereinafter Trandel). Grama asserts that his cause of action should not have been dismissed as barred by the two-year omnibus statute of limitations for insurance providers (735 ILCS 5/13-214.4 (West 2010)) because the action did not accrue until after the date a judgment for damages was entered in his civil lawsuit against GT Cargo and Gintila. Grama asserts that at the very least the action did not accrue until the Workers' Compensation Commission entered an order finding that an employer-employee relationship existed between GT Cargo and Grama and that GT Cargo willfully failed to obtain workers' compensation insurance, so as to put GT Cargo and Gintila on notice of any potential claims they had against Trandel. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The record reveals the following undisputed facts and procedural history. Tomas Gintila is the owner and president of GT Cargo, a corporation involved in interstate freight transportation. Trandel is an Illinois corporation involved in procuring insurance coverage for various individual and business clients, but which holds itself out as a "trucking insurance specialist."

¶ 5 In 2007, when Gintila formed GT Cargo, he approached Trandel to purchase insurance for his trucking business, and sought Trandel's advice as to whether he needed to obtain workers' compensation insurance coverage for his truck drivers. Trandel advised Gintila that truck drivers were independent contractors, and not employees, and that therefore, GT Cargo did not need to obtain workers' compensation insurance for its truck drivers. Rather, Trandel advised GT Cargo to offer its drivers their own "individual workers' compensation or occupation accident policies,"

and guaranteed that such occupation accident policies would cover GT Cargo for any accidents involving its drivers. In reliance on Trandel's advice, Gintila did not purchase workers' compensation insurance coverage for GT Cargo's truck drivers but rather purchased the occupational accident insurance.

¶ 6 On July 18, 2011, Veceslav Grama was hired by GT Cargo as an interstate truck driver. On October 16, 2011, he was permanently and seriously injured while in the process of attaching a tractor to a truck trailer at a GT Cargo facility.

¶ 7 On November 30, 2011, Grama filed a workers' compensation claim against GT Cargo with the Workers' Compensation Commission.

¶ 8 On April 26, 2012, Grama also filed a personal injury action against Gintila seeking damages for the injuries he sustained in his accident. In that action, Grama asserted, *inter alia*, that Gintila, willfully failed to purchase workers' compensation insurance coverage, instead "attempting to maintain a legal fiction that his drivers were independent contractors rather than employees" in violation of section 4(d) of the Illinois Workers' Compensation Act (Workers' Compensation Act) (820 ILCS 305/4(d) (West 2010)). On November 28, 2012, Grama filed his first amended complaint adding GT Cargo as an additional defendant.

¶ 9 On April 12, 2013, the circuit court dismissed Grama's first amended complaint with leave to replead. In doing so, the court explained that any action arising out of an employer's failure to provide workers' compensation insurance to its employees, in violation of section 4(d) of the Workers' Compensation Act (820 ILCS 305/4(d) (West 2010)), must first be presented for a hearing to the the Workers' Compensation Commission before it can be considered by the circuit court. Regarding Grama's allegations seeking recovery for the injuries he sustained as a result of GT Cargo's negligence, the court explained that pursuant to section 5(a) of the Workers'

Compensation Act (820 ILCS 305/5(a) (West 2010)), an employee is barred from seeking common law damages against an employer while concurrently pursuing a workers' compensation claim for the same injury. Nevertheless the court noted:

> "[W]hile there cannot be recovery from both forums (the [circuit] court and the Workers' Compensation Commission), there is nothing to prevent the cautious employee from filing a common law action at the same time the claim for workers' compensation benefits is pending [Citation.] This can occur where a plaintiff is uncertain of the ground for recovery or to toll the statute of limitation. [Citation.]."

¶ 10 On April 19, 2013, Grama filed his second amended complaint against GT Cargo and Gintila. The complaint was amended for a third time on May 31, 2013. Grama supported his amended complaint with an agreed order entered between Grama and GT Cargo, on February 11, 2013, in Grama's pending workers' compensation claim before the Workers' Compensation Commission, whereby the parties stipulated that GT Cargo willfully failed to obtain and possess workers' compensation insurance for the benefit of Grama. On June 27, 2013, the circuit court dismissed Grama's second amended complaint finding, *inter alia*, that "the agreed order between the parties [was] as to the violation [of section 4(d) of the Workers' Compensation Act] only and contains no findings of fact by the [Workers' Compensation] Commission and does not indicate that any hearing was held." The court further noted that the agreed order "does not in and of itself imply the existence of such [employment] relationship *** or provide a basis to proceed directly against [Grama's] employer." The court therefore held that under section 4(d) of the Act (820 ILCS 305/4(d) (West 2010)), it was necessary for the Commission to make a factual determination as to whether an employment relationship existed between GT Cargo and Grama

before the circuit court had jurisdiction to consider Grama's claims. The court, therefore, granted Grama leave to file his fourth amended complaint in according with this ruling.

¶ 11 In August 2013, GT Cargo filed its answer and affirmative defenses and the cause proceeded with discovery.

¶ 12 On September 13, 2013, the Workers' Compensation Commission held an evidentiary hearing on Grama's claim. On February 5, 2014, in a written order, the Commission found that Grama was not an independent contractor, and that there existed an employer-employee relationship between GT Cargo and Grama, such that GT Cargo willfully failed to obtain worker's compensation insurance for the benefit of its employees in violation of section 4(d) of the Workers' Compensation Act (820 ILCS 305/4(d) (West 2010)).

¶ 13 On April 23, 2014, Grama filed its fourth amended complaint with the circuit court. This complaint is not part of the record on appeal.

¶ 14 On September 10, 2014, Grama and GT Cargo and Gintila entered into a Liability Stipulation Agreement and Covenant Not to Enforce Judgment Release (hereinafter the settlement agreement). Therein the parties agreed that in exchange for $12,500 and an assignment of all actions GT Cargo and Gintila had against Trandel (arising from Trandel's professional conduct and its representation to GT Cargo that it was not required to purchase workers' compensation insurance for its truck drivers), Grama would release Gintila and GT Cargo of any liability in the personal injury cause of action. The settlement agreement provided in pertinent part:

> "Grama hereby releases and forever discharges GT Cargo, Gintila and their current and former agents, administrators, successors, affiliates, marital assets, additional investment and assigns of and from any and all actions, causes of action, claims, demands, damages, judgments, costs, expense, and liability on account of, or in any way growing out of, any

> and all known and unknown damages, losses, injures, wage losses, and expenditures arising out of or in any way relating to any and all claims based on, or in any manner related to the incident and the lawsuit, including any claims which were or could have been alleged in the lawsuit."

¶ 15 Following a bench trial, on September 24, 2014, the circuit court entered a judgment in favor of Grama and against GT Cargo in the amount of $845,472.39.

¶ 16 Four days after this judgment was entered, on September 30, 2014, Grama, as assignee of GT Cargo and Gintila filed the instant two-count complaint against Trandel. Therein he alleged, *inter alia*, that Trandel was professionally negligent in representing to GT Cargo and Gintila that truck drivers were independent contractors, not employees, and that therefore it was unnecessary for GT Cargo to obtain workers' compensation insurance for its truck drivers. Grama also alleged that through its false misrepresentations to Gintila and GT Cargo, Trandel violated the Illinois Consumer Fraud Act (Consumer Fraud Act) (815 ILCS 505 *et seq*. (West 2010)).

¶ 17 On November 3, 2014, Trandel filed a motion to dismiss pursuant to section 2-619 of the Illinois Code of Civil Procedure (Code of Civil Procedure) (735 ILCS 5/2-619 (West 2010)), contending that the action was barred by the statute of limitations for actions against insurance providers (see 735 ILCS 5/13-214.4 (West 2010)).

¶ 18 Grama filed a response on November 24, 2014, contending that the motion was meritless because the earliest an action against Trandel accrued was on February 5, 2014, when the Workers' Compensation Commission issued its order finding an employer-employee relationship existed between him and GT Cargo, thereby placing him on notice of any claim against Trandel. Because Grama filed his complaint within 8 months after that order was entered, he contended

that his actions were filed well within the two year-statute of limitations for insurance producers (735 ILCS 5/13-214.4 (West 2010)).

¶ 19 On January 29, 2015, the circuit court granted Trandel's motion to dismiss. Grama now appeals the dismissal of his complaint as untimely pursuant to section 2-619(a) of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2010)).

¶ 20 II. ANALYSIS

¶ 21 At the outset, we note that a motion to dismiss pursuant to section 2-619 (735 ILCS 5/2-619 (West 2010)) admits the legal sufficiency of the complaint (*i.e.*, all facts well pleaded), but asserts certain defects, defenses or other affirmative matters that appear on the face of the complaint or are established by external submissions that act to defeat the claim. *Relf v. Shatayeva*, 2013 IL 114925, ¶ 20; *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). Subsection (a)(5) of section 2-619, pursuant to which Trandel's motion was brought, specifically allows dismissal when "the action was not commenced within the time limited by law." 735 ILCS 5/2-619(a)(5) (West 2010). In ruling on a section 2-619 motion, all pleadings and supporting documents must be construed in a light most favorable to the nonmoving party, and the motion should be granted only where no material facts are in dispute and the defendant is entitled to dismissal as a matter of law. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55. The relevant inquiry on appeal is " 'whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law.' " *Sandholm*, 2012 IL 111443, ¶ 55 (quoting *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116-17 (1993)). Our review the circuit court's grant of a motion to dismiss pursuant to section 2-619 is *de novo*. *Relf*, 2013 IL 114925, ¶ 21.

¶ 22 In the present case, the parties agree that Grama's negligent procurement and consumer fraud

actions against Trandel are governed by the two-year statute of limitations set forth in section 13-214.4 of the Code of Civil Procedure (735 ILCS 5/13-214.4 (West 2010)). See *State Farm Fire & Casualty Co. v. John J. Rickhoff Sheet Metal Co.*, 394 Ill. App. 3d 548, 565 (2009) (The two year statute of limitations set forth in section 13-214.4 "encompasses [all] claims by an insured against his insurance agent."). That section provides in pertinent part:

> "All causes of action brought by any person or entity under any statute or any legal or equitable theory against an insurance producer, registered firm, or limited insurance representative concerning the sale, placement, procurement, renewal, cancellation of, or failure to procure any policy of insurance shall be brought within 2 years of the date the cause of action accrued." 735 ILCS 5/13-214.4 (West 2010).

¶ 23 The parties disagree as to when Grama's causes of action against Trandel accrued. Grama maintains that both causes of action (negligent procurement of insurance and consumer fraud) sound in tort and therefore accrued when he suffered an injury—*i.e.*, when the judgment for damages against GT Cargo, based upon, *inter alia*, its failure to obtain workers' compensation insurance for Grama, was entered on September 24, 2014. Alternatively, Grama asserts that the circuit court should have applied the discovery rule to toll the running of the statute of limitations until the injury was discoverable. He asserts that he could not have discovered his injury earlier than February 5, 2014, until the Workers' Compensation Commission issued its order finding that Grama was an employee of GT Cargo and that GT Cargo willfully failed to obtain workers' compensation insurance on his behalf. According to Grama, this order was a prerequisite to any action he could have filed against GT Cargo, and by assignment against Trandel.

¶ 24 Trandel, on the other hand, argues that the actions accrued when GT Cargo contracted with

Trandel to obtain insurance in 2007, because the injury was the failure to acquire the requisite worker's compensation insurance. Alternatively, Trandel contends that even applying the discovery rule, Grama was on notice of any injury by November 30, 2011, when he filed his claim for benefits with the Workers' Compensation Commission, and, at the very least, by September 9, 2012, when he served his first complaint against GT Cargo. In support of this position, Trandel points out that GT Cargo's failure to obtain workers' compensation insurance played a prominent part in both pleadings filed by Grama. For the reasons that follow, we agree with Trandel.

¶ 25 Our courts have generally treated the accrual of a cause of action in tort differently from the accrual of a cause of action in contract. *State Farm Fire & Casualty*, 394 Ill. App. 3d at 565. For most torts, the cause of action accrues when the plaintiff suffers an injury. *General Casualty Co. of Illinois v. Carroll Tiling Service, Inc.*, 342 Ill. App. 3d 883, 898 (2003). On the other hand, for contract actions and torts arising out of contractual relationships, the action accrues at the time of the breach of contract (or breach of duty). *Indiana Insurance Co., v. Machon & Machon, Inc.*, 324 Ill. App. 3d 300, 303 (2001) (citing *West American Insurance Co. v. Sal E. Lobianco & Son Co.*, 69 Ill. 2d 126, 132 (1977)); see also *General Casualty*, 342 Ill. App. 3d at 898. The rationale behind this distinction is the concern that a plaintiff will attempt to delay bringing suit after a contract is breached in order to increase damages. See *Indiana Insurance Co.*, 324 Ill. App. 3d at 303 (citing *West American Insurance Co.*, 69 Ill. 2d at 132; see also *Del Bianco v. American Motorists Insurance Co.*, 73 Ill. App. 3d 743, 748 (1979) (This rule encourages a party to act quickly after a breach "rather than to delay until damages increase" and "recognizes that [the] plaintiff has chosen to deal with the defendant," and, as a result, their relationship could have been defined in a way as to minimize loss."). In either event, contrary to

Grama's position, the fact that "damages are not immediately ascertainable does not postpone the accrual of a claim." *Indiana Insurance Co.*, 324 Ill. App. 3d at 304 (citing *Del Bianco*, 73 Ill. App. 3d at 748).

¶ 26 With respect to section 13-214.4 of the Code of Civil Procedure (735 ILCS 5/13-214.4 (West 2010)), our appellate courts have repeatedly held that in the context of claims against an insurance agent or broker for procurement of insurance policies with defects in coverage, such as here, a cause of action is one in tort, arising out of a contract, and therefore accrues on the date coverage under a policy is denied. *State Farm Fire & Casualty*, 394 Ill. App. 3d at 566 (citing *Broadnax v. Morrow*, 326 Ill. App. 3d 1074, 1081 (2002)).

¶ 27 In the present case, the breach of contract (or duty) by Trandel, occurred when it advised GT Cargo and Gintila that truck drivers were independent contractors, and therefore GT Cargo did not have to purchase workers' compensation insurance for them. As such, the "denial" of any workers' compensation coverage occurred when, upon Trandel's advice, GT Cargo failed to purchase such insurance in 2007. See *e.g.*, *Hoover v. Country Mut. Ins. Co.*, 2012 IL App (1st) 110939, ¶¶ 51-61 (holding that a homeowners' negligence claim against an insurance agent for failing to procure homeowners' insurance policy providing replacement cost coverage, according to the homeowners' instructions, accrued from the date the agent allegedly procured the inadequate policy, regardless of whether the homeowners were aware that the policy did not comply with their instructions); see also *State Farm Fire & Casualty*, 394 Ill. App. 3d at 566; *Broadnax*, 326 Ill. App. 3d at 1081.

¶ 28 Grama nevertheless argues that GT Cargo could not have known of this breach until after the Workers' Compensation Commission entered its order finding that there was an employer-employee relationship between GT Cargo and Grama, thereby putting GT Cargo (and by virtue

of assignment Grama) on notice of its claims against Trandel. He therefore urges us to use the "discovery rule" to toll the statute of limitations. For the reasons that follow, we disagree with Grama's analysis.

¶ 29 The discovery rule was developed to "avoid mechanical application of a statute of limitations in situations where an individual would be barred from suit before he was aware that he was injured." *Hermitage Corp. v. Contractors Adjustment Co*., 166 Ill. 2d 72, 77-78 (1995). The rule postpones the commencement of the limitations period until a person "knows or reasonably should have known of his injury and also knows or reasonably should have known that it was wrongfully caused." *Knox College v. Celotex Corp*., 88 Ill. 2d 407, 415 (1989).

¶ 30 "Wrongfully caused" does not mean knowledge of a specific defendant's negligent conduct or knowledge that an actionable wrong was committed. *Steinmetz v. Wolgamot*, 2013 IL App (1st) 121375, ¶ 30 (citing *Castello v. Kalis*, 352 Ill. App. 3d 736, 744-45 (2004)); see also *Young v. McKiegue*, 303 Ill. App. 3d 380, 388 (1999). Rather, a plaintiff knows or should know his injury was "wrongfully caused" when he "becomes possessed of sufficient information concerning his injury and its cause to put a reasonable person on inquiry to determine whether actionable conduct is involved." (Internal quotation marks omitted.) *Steinmetz*, 2013 IL App (1st) 121375, ¶ 30; see also *Knox College*, 88 Ill. 2d at 416; see also *Hanks v. Cotler*, 2011 IL App (1st) 101088, ¶ 19 ("the commencement of the limitations period" is tolled "until the potential plaintiff possesses sufficient information concerning his or her injury and its cause to put a reasonable person on notice to make further inquiries").

¶ 31 The law is well settled that once a party knows or reasonably should have known both of the injury and that it was wrongfully caused " 'the burden is upon the injured person to inquire further as to the existence of a cause of action.' " *Castello*, 352 Ill. App. 3d at 745 (quoting

Witherell v. Weimer, 85 Ill.2d 146, 156 (1981); *Mitsias v. I-Flow Corp.*, 2011 IL App (1st) 101126, ¶ 23 ("as soon as [the plaintiff] has sufficient information about her injury and its cause to spark inquiry in a reasonable person as to whether the conduct of the party who caused her injury might be legally actionable," the plaintiff has the burden to "investigate whether she has a viable cause of action."). The purpose of this rule is to encourage diligent investigation on the part of potential plaintiffs without foreclosing any claims of which the plaintiffs could not have been aware. *Mitsias*, 2011 IL App (1st) 101126, ¶ 21. As our supreme court has explained: "In that way, an injured person is not held to a standard of knowing the inherently unknowable [citation], yet once it reasonably appears that an injury was wrongfully caused, the party may not slumber on his rights." *Nolan v. Johns-Manville Asbestos*, 85 Ill. 2d 161, 171 (1981).

¶ 32 In most instances, the time at which a plaintiff knows or reasonably should have known both of the injury and that it was wrongfully caused will be a question of fact. *Nair v. Bloom*, 383 Ill. App. 3d 867, 870 (2008) (citing *Witherell*, 85 Ill. 2d at 156); see also *Castello*, 352 Ill. App. 3d at 744; see also *Rasgaitis v. Waterson Financial Group, Inc.*, 2013 IL App (2d) 11112, ¶ 30 (2013) ("Generally determining the point at which the running of the limitations period begins under the discovery rule is a question of fact"). However, "[w]here it is apparent from the undisputed facts *** that only one conclusion can be drawn, the question becomes one for the court" (*Witherell*, 85 Ill. 2d at 156), and can be resolved as a matter of law, making a section 2-619 dismissal on statute of limitations grounds appropriate. See *Castello*, 352 Ill. App. 3d at 744 (citing *Witherell*, 85 Ill. 2d at 156); see also *Nair*, 383 Ill. App. 3d at 870; *Saunders*, 150 Ill. App. 3d at 61 ("If only one conclusion can be drawn from the undisputed facts, the question of the timeliness of the plaintiff's complaint is for the court to decide.").

¶ 33 Our courts have repeatedly held that the discovery rule applies to causes of action, such as

this one, brought against an insurance broker or agent, and which would otherwise be barred by the two year statute of limitations provided for in section 13-214.4 of the Code of Civil Procedure (735 ILCS 5/13-214.4 (West 2010)). See *e.g.*, *Broadnax,* 326 Ill. App. 3d 1074; *Indiana Insurance Co*., 324 Ill. App. 3d at 304; see also *General* Casualty, 342 Ill. App. 3d at 899-900.

¶ 34 In *Broadnax,* the plaintiff had procured fire insurance and filed a claim after his building was damaged in a fire. *Broadnax,* 326 Ill. App. 3d 1074. The insurance company denied coverage because the plaintiff had not complied with a vacancy provision of the policy and, on May 10, 1996, filed a declaratory judgment action seeking a declaration of no coverage. *Broadnax,* 326 Ill. App. 3d 1074. On September 1, 1999, the plaintiff filed a negligence action against the insurance agent for obtaining a policy that did not allow the plaintiff to leave his building vacant. *Broadnax,* 326 Ill. App. 3d 1076-77. The court, determining that the relationship between the plaintiff and the insurance agent was fiduciary, held that the discovery rule applied. *Broadnax*, 326 Ill. App. 3d at 1079. Applying the discovery rule, the court then, nevertheless, concluded that the limitations period commenced on May 10, 1996, the date on which the insurer filed the declaratory judgment action, because on that date, the plaintiff knew or reasonably should have known that the policy procured by the insurance agent contained a vacancy provision with which the plaintiff had not complied. *Broadnax,* 326 Ill. App. 3d at 1081. In doing so, the court explicitly rejected the plaintiff's assertion that he could not have filed a lawsuit against the insurance agent until a final determination of the insurer's responsibility in the declaratory judgment action was made. *Broadnax*, 326 Ill. App. 3d at 1082. The court noted that the Code of Civil Procedure permits a plaintiff to plead alternative theories of recovery. *Broadnax,* 326 Ill. App. 3d at 1082. Therefore, the court found that the plaintiff did not have to wait until the

declaratory judgment action made certain that the plaintiff was not covered; the plaintiff could have also sued the insurance agent as an alternative theory. *Broadnax*, 326 Ill. App. 3d at 1082. Accordingly, his failure to do so was detrimental and his cause of action was barred by the statue of limitations. *Broadnax*, 326 Ill. App. 3d at 1082.

¶ 35 The decision in *Broadnax* has since been consistently followed by our appellate courts to hold that a cause of action against an insurance agent accrues when the insured knew or reasonably should have known that coverage was denied, rather than on the date when such denial was confirmed by a judgment of the court. See *Commonwealth Insurance Co.*, 3232 F.3d 507, 510-11 (7th Cir. 2003) (holding that under Illinois law an insured paper manufacturer's claim against an insurance broker for breach of contract, negligence and breach of fiduciary duty for failing to obtain adequate insurance coverage, accrued, for limitations purposes, on the date that the insured knew that, *inter alia*, the all-risk insurers had denied coverage for loss the insured sustained as a result of a plant explosion, rather than on the date that the insured's underlying cause of action against the insurers was resolved against it); see also *State Farm Fire & Casualty*, 394 Ill. App. 3d at 565-67 (holding that insured's claims against an insurance agent for breach of contract to procure insurance for an additional insured, and negligence in procurement of such insurance, accrued, for purposes of the two-year statue of limitations, on the date that the insured discovered that the insurer had denied coverage of the additional insured, rather than the date such denial was confirmed in the insurer's declaratory judgment action); *Hoover*, 2012 IL App (1st) 110939, ¶¶ 51-61 (holding that in an action by homeowners for negligent procurement of an insurance policy, the discovery rule did not toll the limitations period beyond the date when coverage was denied, even if homeowners were unaware that policy did not comply with their instructions until they made such a claim); see also *General*

Casualty, 342 Ill. App. 3d 883 (holding that discovery rule operated to toll the applicable two year statute of limitations to a plaintiff's third-party breach of fiduciary duty claim against an insurance agent but only until the insurer filed its claim seeking a declaration that the plaintiff was not covered by the workers' compensation policy, and not until that declaratory judgment action was decided; finding that the plaintiff's employer had actual knowledge of the plaintiff's exclusion from coverage under the workers' compensation policy, and thus, the plaintiff's employer could not invoke the discovery rule to toll the two-year statute of limitations).

¶ 36 Applying these decisions to the cause at bar, we conclude that GT Cargo knew or reasonably should have known of any claims against Trandel, on November 30, 2011, when Grama filed his claim for benefits with the Workers' Compensation Commission, and no later than April 26, 2012, when he filed his personal injury claim against Gintila and GT Cargo. In his complaint against GT Cargo, Grama explicitly accused GT Cargo of not having workers compensation as required by law, and instead using a "legal fiction" to treat all drivers as independent contractors, thereby violating section 4(d) of the Workers' Compensation Act (820 ILCS 305/4(d) (West 2010)). Once GT Cargo had to pay out of its own pocket to defend the workers' compensation claim against Grama (having no carrier to tender the defense to) it sustained "damages" to support a claim against Trandel. At the very least, at this point, GT Cargo (and Grama) certainly knew that if GT Cargo improperly failed to purchase workers' compensation insurance on the advice of Trandel, Trandel could be held liable for negligence.

¶ 37 The fact that until the Workers' Compensation Commission decided that there was an employer-employee relationship, Grama could neither pursue its personal injury claims against GT Cargo, nor succeed on a third-party complaint against Trandel, is irrelevant to our consideration of the application of the discovery rule to the limitations period. As the court in

Broadnax explained, the Code of Civil Procedure permits a plaintiff to plead alternative theories of recovery, even when they will not be successful. *Broadnax*, 326 Ill. App. 3d at 1082. In fact, the circuit court itself told Grama the same thing in dismissing his first two complaints against GT Cargo, with leave to replead. As the circuit court informed Grama on April 12, 2013, even where by law a plaintiff cannot simultaneously succeed on two types of actions "there is nothing to prevent the cautious employee from filing" both, especially " where a plaintiff is uncertain of the ground for recovery or to toll the statute of limitation." Under this record, we find it hard to accept Grama's argument that GT Cargo could not have reasonably known of its injury earlier than February 5, 2014. By April 26, 2012, both Grama and GT Cargo could have at least alleged and filed causes of action against Trandel.

¶ 38 Grama nevertheless asserts that we should not apply *Broadnax*, 326 Ill. App. 3d at 1082 and its progeny. Rather, Grama would have us rely on decisions analyzing other professional (namely legal and accounting) malpractice actions, to create new precedent holding that the discovery rule applies to toll the accrual period for actions involving insurance agents and brokers, until the plaintiff knows the actual amount of damages her or she has suffered. See *e.g.*, *Warnock v. Karm Winand & Patterson*, 376 Ill. App. 3d 364, 369 (2007) (" 'a cause of action for legal malpractice will rarely accrue prior to the entry of an adverse judgment, settlement or dismissal of the underlying action in which plaintiff has become entangled due to the purportedly negligent advice of his attorney." [Citation.]"); *Federated Industries Inc., v. Reisin*, 402 Ill. App. 3d 23, 36 (2010). We, however, reject this invitation as we are bound by the principles of *stare decisis*. See *O'Casek v. Children's Home and Aid Soc. Of Illinois*, 229 Ill. 2d 421, 439-440 ("The doctrine of *stare decisis* is the means by which courts ensure that the law will not merely

change erratically, but will develop in a principled and intelligible fashion.") (internal citations omitted).

¶ 39 For similar reasons, we reject Grama's reliance on the decision of the California Appellate Court in *Williams v. Hilb, Rogal & Hobbs Ins. Services of California, Inc.*, 177 Cal. App. 4th 624 (Sept 9, 2000), which applies the professional malpractice standard to a cause of action against an insurance procurer. "Although it is helpful to look to other jurisdictions for guidance, we are not bound by those decisions and must decide the case in a manner consistent with Illinois law." (Internal quotations omitted). *People v. Rush*, 2014 IL App (1st) 123462, ¶ 28; *Mount Vernon Fire Insurance Co. v. Heaven's Little Hands Day Care*, 343 Ill.App.3d 309, 320 (2003) (cases from foreign jurisdictions do not bind the appellate court). The application of the professional malpractice standard to insurance procurers has already been rejected by the United States Court of Appeals for the Seventh Circuit, which adopted *Broadnax* after comparing it to the law of other United States jurisdictions, noting that "nothing" in that decision "was outside the norm of what other jurisdictions have concluded." *Commonwealth Insurance*, 323 F. 3d at 511. Accordingly, we find no reason to depart from *Broadnax* and its progeny.

¶ 40 In so doing, we are not without sympathy for Grama's predicament. Admittedly we fail to understand under what circumstances Grama, presumably represented by counsel, would have entered into a settlement agreement with GT Cargo only days before a judgment against GT Cargo and in its favor was entered. What is more, it is a conundrum how Grama could have agreed to such a settlement, relinquishing any rights it had against GT Cargo in favor of actions against Trandel, without first having determined whether any actions against Trandel were still viable, rather than stale. Nevertheless, under the circumstances, we are compelled to conclude

that under the current state of Illinois law, Grama's actions against Trandel were barred by the two-year statute of limitations.

¶ 41 III. CONCLUSION

¶ 42 For the aforementioned reasons, we affirm the judgment of the circuit court.

¶ 43 Affirmed.