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And The Defense Wins

DRI member [Michael McCormack](#) of **Hinckley, Allen & Snyder, LLP** in Hartford, Connecticut, successfully defended an appeal before the Connecticut Appellate Court in the matter of *Piteo v. Gottier et al.*, 112 Conn. App., 441, 963 A.2d 83 (2009), after obtaining summary judgment on two counts of plaintiff's complaint and judgment on the third count of a complaint following trial in the Connecticut Superior Court.



Michael McCormack

The plaintiff alleged that the defendants, a financial advisor and a securities brokerage firm, were liable to him because they: (1) breached their fiduciary duties to the plaintiff by closing and transferring plaintiff's Individual Retirement Account (IRA) without the plaintiff's consent and in a financially imprudent manner; and (2) breached their duty to provide the plaintiff with competent financial advice, services and representation by closing his IRAs without the plaintiff's consent and in a financially imprudent manner. The plaintiff sought in excess of \$500,000 in claimed losses arising from the decreased value of his IRA.

The Connecticut Superior Court entered summary judgment in favor of the defendants on plaintiff's negligence and breach of fiduciary duty claims after finding that those claims were barred by the applicable statute of limitations. Following a trial on the plaintiff's breach of contract claim, the court entered judgment in favor of the financial advisor and securities brokerage firm on that claim. See *Piteo v. Gottier et al.*, 2007 Conn. Super. LEXIS 2953 (Conn.Super. 2007).

After trial, the plaintiff appealed the court's entry of summary judgment. On appeal, the plaintiff contended that the statute of limitations applicable to the plaintiff's negligence and breach of fiduciary duty claims should have been tolled by the continuous representation doctrine, which has been applied to toll the statute of limitations in certain legal malpractice claims when an attorney continued to represent a client in the same underlying matter following the alleged malpractice and the client did not know of the alleged legal malpractice or the attorney could still mitigate the harm allegedly caused by the malpractice. The plaintiff sought to have the Connecticut Appellate Court rule that the continuous representation doctrine applied to all cases in which there is a fiduciary relationship between the plaintiff and the defendant.

The Connecticut Appellate Court held, however, that the continuous representation doctrine does not apply to all professionals owing a fiduciary duty to their clients and, therefore, affirmed the entry of summary judgment in favor of the defendants.