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Negligent Misrepresentation in Illinois: The First District Expands Its Scope beyond Defendants in the Business of Supplying Information, 22 J. Marshall L. Rev. 753 (1989)

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RECENT DEVELOPMENTS

NEGLIGENT MISREPRESENTATION IN ILLINOIS: THE FIRST DISTRICT EXPANDS ITS SCOPE BEYOND DEFENDANTS IN THE BUSINESS OF SUPPLYING INFORMATION

The Illinois Supreme Court first recognized a cause of action for negligent misrepresentation¹ in *Rozny v. Marnul*² in 1969. Until recently, Illinois courts generally permitted plaintiffs to recover only against defendants who were in the business of supplying information.³ However, in *Board of Education of Chicago v. A, C, & S, Inc.*,

1. Negligent misrepresentation allows a plaintiff to recover economic loss resulting from his reliance on a false statement made by a defendant who acted unreasonably in not ascertaining the truth. Comment, *Negligent Misrepresentation in Missouri: Tooling Up for the Tort of the Eighties*, 50 Mo. L. Rev. 877 (1985). A representation made with an honest belief in its truth may still be negligent if the person making the representation failed to use reasonable care in ascertaining the facts, or in presenting his ability to act with the skill or competence required in a particular trade or business. PROSSER & KEETON, *THE LAW OF TORTS* § 107, at 745 (5th ed. 1984). A negligent misrepresentation can be a representation that the speaker believes to be true but is actually false because of the speaker's negligent inaccuracy concerning a material fact. *Lehmann v. Arnold*, 137 Ill. App. 3d 412, 420, 484 N.E.2d 473, 479 (1985).

2. 43 Ill. 2d 54, 250 N.E.2d 656 (1969).

3. *Century Universal Enter., Inc. v. Triana Dev. Corp.*, 158 Ill. App. 3d 182, 206, 510 N.E.2d 1260, 1274 (1987) (defendants merely in business of managing venture not liable for negligent misrepresentation); *Zimmerman v. Northfield Real Estate Inc.*, 156 Ill. App. 3d 154, 164, 510 N.E.2d 409, 415 (1986) (held realtors were in business of supplying information), *appeal denied*, 515 N.E.2d 129 (Ill. 1987); *Perschall v. Raney*, 137 Ill. App. 3d 978, 983-84, 484 N.E.2d 1286, 1290 (1985) (ruled termite inspector was in business of supplying information); *Knox College v. Celotex Corp.*, 117 Ill. App. 3d 304, 308, 453 N.E.2d 8, 11 (1983) (no cause of action against manufacturer and seller of roof materials because not in business of supplying information); *Black, Jackson and Simmons Ins. Brokerage, Inc. v. Int'l Business Machines Corp.*, 109 Ill. App. 3d 132, 136, 440 N.E.2d 282, 284 (1982) (no cause of action against seller of computer and software package who were not in business of supplying information); See also POLELLE & OTTLEY, *ILLINOIS TORT LAW* 265-66 (1985).

Other decisions, however, have not limited negligent misrepresentation to defendants in the business of supplying information. *Board of Educ. of Chicago v. A, C, & S, Inc.*, 171 Ill. App. 3d 737, 756, 525 N.E.2d 950, 962 (1988) (cause of action existed against manufacturers, suppliers and installers of asbestos-containing material); *Rotello v. Scott*, 95 Ill. App. 3d 248, 252, 419 N.E.2d 1233, 1235 (1981) (sellers of property held liable for falsely representing existence of sewer hook-up); *Lyons v.*

the Illinois Appellate Court squarely held that anyone who negligently supplies information to others in a transaction in which he has a pecuniary interest could be liable for economic damages under a theory of negligent misrepresentation.⁴

In *A, C, & S*, several school districts were under a legal obligation to remove asbestos-containing material from their school buildings. They therefore brought suit to recover economic damages from the various suppliers of the asbestos-containing products, alleging among other things, strict liability, negligence, and negligent misrepresentation.⁵

The Illinois Appellate Court for the First District reversed the lower court's dismissal of the plaintiffs' negligent misrepresentation claim, stating that "[t]he tort of negligent misrepresentation does not require that defendants be in the business of supplying information."⁶ In other words, in a negligent misrepresentation claim, the nature of the defendant's business is irrelevant so long as he supplied the information in connection with a transaction in which he had a pecuniary interest.

The *A, C, & S* decision is a step in the right direction. Previous Illinois Appellate Court decisions, in limiting the scope of negligent misrepresentation, have misinterpreted the Illinois Supreme Court's treatment of the tort, ignored the proper interpretation of Section 552 of the Second Restatement, and ignored the modern trend established by other states dealing with negligent misrepresentation. Other Illinois appellate courts should follow the *A, C, & S* court's broad application of negligent misrepresentation, which permits the cause of action against a wider variety of defendants.

HISTORY OF NEGLIGENT MISREPRESENTATION IN ILLINOIS

The Illinois Appellate Court began to recognize the tort of neg-

Christ Episcopal Church, 71 Ill. App. 3d 257, 261, 389 N.E.2d 623, 625-26 (1979) (church liable for negligently representing that building connected to city's sanitary sewerage system); *McAfee v. Rockford Coca-Cola Bottling Co.*, 40 Ill. App. 3d 521, 526, 352 N.E.2d 50, 55 (1976) (cause of action permitted against potential employer who induced plaintiff to quit job).

4. *Board of Educ. of Chicago v. A,C, & S, Inc.*, 171 Ill. App. 3d 737, 756, 525 N.E.2d 950, 954 (1988).

5. *A,C, & S*, 171 Ill. App. 3d at 756, 525 N.E.2d at 954. The plaintiffs also made claims for restitution, a private right of action under the Asbestos Abatement Act, consumer fraud, breach of warranty, and concert of action. *Id.*

6. *Id.* at 744, 525 N.E.2d at 954. The court's secondary argument was that the plaintiffs' complaint sufficiently alleged actual damages (personal injury), rather than just economic damages. *Id.* The appellate court concluded that the trial court had incorrectly dismissed the plaintiffs' claims under other tort theories (strict liability and negligence) because the existence of asbestos materials in the schools was a threat to the health and welfare of the students. *Id.* at 748, 525 N.E.2d at 956.

ligent misrepresentation in the mid-1960s.⁷ Several courts found the tort in Section 552 of the Restatement of Torts, which at that time stated that "one who in the course of his business or profession supplies information for the guidance of others in their business transactions is subject to liability for harm caused to them by their reliance upon the information if . . . he fails to exercise care and competence"⁸

A. *Rozny v. Marnul*

The Illinois Supreme Court first recognized the tort of negligent misrepresentation in *Rozny v. Marnul*, holding a surveyor liable for negligently supplying an incorrect survey.⁹ The defendant had prepared the survey for a company building a real estate development.¹⁰ The plaintiffs eventually acquired the defendant's survey from a bank when it assumed the builder's mortgage.¹¹ Relying on the survey, the plaintiff extended a driveway and built a garage that encroached slightly on the adjacent lot.¹²

In considering the plaintiff's claim against the surveyor for tortious misrepresentation, the Illinois Supreme Court first abolished the traditional requirement that a plaintiff be in privity of contract with the defendant.¹³ The *Rozny* court determined that notwith-

7. *Citizens Sav. & Loan Ass'n v. Fischer*, 67 Ill. App. 2d 315, 214 N.E.2d 612 (1966); *Guaranty Bank and Trust Company v. Reyna*, 51 Ill. App. 2d 412, 201 N.E.2d 144 (1964).

8. The full text of original Section 552 read as follows:

One who in the course of his business or profession supplies information for the guidance of others in their business transactions is subject to liability for harm caused to them by their representation if

(a) he fails to exercise that care and competence in obtaining and communicating the information which its recipient is justified in expecting, and
(b) the harm is suffered

(i) by the person or in of the class of persons for whose guidance the information was supplied, and

(ii) because of his justifiable reliance upon it in a transaction in which it was intended to influence his conduct or in a transaction substantially identical therewith.

RESTATEMENT OF TORTS, § 552 (1938).

9. *Rozny*, 43 Ill. 2d at 68, 250 N.E.2d at 663.

10. *Id.* at 57, 250 N.E.2d at 658. The property was purchased by a builder who subsequently erected a house. *Id.* at 57, 250 N.E.2d at 658. A bank received the inaccurate survey when the builder was granted a loan placing a mortgage on the property. *Id.* The defendant claimed that he issued a corrected survey; there was no evidence, however, that the bank or builder ever received it. *Id.*

11. *Id.* at 58, 250 N.E.2d at 658. The defendant's erroneous survey stated that "this plat of survey carries our absolute guarantee for accuracy, and is issued subject to faithful carrying out of the above and foregoing instructions and conditions before any liability will be assumed on part of the Jens K. Doe survey service." *Id.* at 58-59, 250 N.E.2d 658-59.

12. *Id.* at 58, 250 N.E.2d at 658 (west edge of garage encroached from two (2) inches to just over a foot onto adjacent lot).

13. *Id.* at 66, 250 N.E.2d at 662; See *Ultramares Corp. v. Touche, Niven & Co.*,

standing the lack of privity, it was reasonably foreseeable to the defendant that a third party would rely on the survey in financing and purchasing the property.¹⁴ The supreme court therefore concluded that the defendant was liable for negligently representing that their survey was accurate.¹⁵ Thus, *Rozny* established that a person who carelessly makes representations, such as to the accuracy of a survey, may be liable if those representations are false. The *Rozny* court did not, however, say whether liability for negligent misrepresentation was limited to defendants who produce surveys or offer other informational services.

After *Rozny*, the Illinois Appellate Court continued to recognize a cause of action for negligent misrepresentation in cases involving a variety of defendants: private sellers of real property, real estate brokers, a church, stock brokers, and a prospective employer.¹⁶ It thus appeared that the tort of negligent misrepresentation had a broad reach and was not limited to a narrow category of defendants.

B. *The Moorman Manufacturing Dicta*

In 1982, the Illinois Supreme Court made a passing reference to its *Rozny* decision and greatly affected the development of negligent misrepresentation in Illinois. In *Moorman Manufacturing Company v. National Tank Company*,¹⁷ a buyer brought an action against the manufacturer of a grain tank for economic damages suffered when the tank developed a crack. The supreme court held that the plain-

255 N.Y. 170, 174 N.E. 441 (1931). In a famous opinion, Justice Cardozo ruled that an accountant was not liable to a lender for negligently preparing a certified audit of a borrower. *Ultramares*, 255 N.Y. at 185, 174 N.E. at 447. Although the lender relied on the audit in extending the borrower credit, Cardozo concluded that the lender did not have a cause of action for negligent misrepresentation against the accountant because of the absence of a contractual relationship between the two parties. *Id.* Thus, *Ultramares* established the rule that a plaintiff has to be in privity of contract with a provider of information in order to sue him for negligent misrepresentation. *Id.*; *Rozny*, 43 Ill. 2d at 65; 250 N.E.2d at 662. The *Rozny* court determined that privity was not required in this case because the defendant surveyor included an absolute guarantee of accuracy on the inaccurate survey. *Rozny*, 43 Ill. 2d at 66, 250 N.E.2d at 662.

14. *Rozny*, 43 Ill. 2d at 66, 250 N.E.2d at 662.

15. *Id.* at 68, 250 N.E.2d at 663. The court ruled that "the situation is not one fraught with such an overwhelming potential liability as to dictate a contrary result, for the class of persons who might foreseeably use this plat is rather narrowly limited, if not exclusively so, to those who deal with the surveyed property as purchasers or lenders." *Id.* at 66, 250 N.E.2d at 662.

16. *Rotello v. Scott*, 95 Ill. App. 3d 248, 419 N.E.2d 1233 (1981) (seller of real property); *Duhl v. Nash Realty Inc.*, 102 Ill. App. 3d 483, 429 N.E.2d 1267 (1981) (real estate broker); *Lyons v. Christ Episcopal Church*, 71 Ill. App. 3d 257, 389 N.E.2d 623 (1979); *Penrod v. Merrill Lynch, Pierce, Fenner & Smith*, 68 Ill. App. 3d 75, 385 N.E.2d 376 (1979) (stockbrokers); *McAfee v. Rockford Coca-Cola Bottling Co.*, 40 Ill. App. 3d 521, 352 N.E.2d 50 (1976) (prospective employer).

17. 91 Ill. 2d 69, 435 N.E.2d 443 (1982).

tiffs could not recover solely economic losses under theories of strict liability, negligent design, or innocent misrepresentation.¹⁸ The *Moorman* court held the plaintiffs' economic losses could be recovered under the Uniform Commercial Code¹⁹ rather than under those tort theories. In dicta citing *Rozny*, however, the *Moorman* court indicated that a plaintiff could recover economic loss in a negligent misrepresentation cause of action ". . . where one who is in the business of supplying information for the guidance of others in their business transactions makes negligent representations."²⁰

The Illinois appellate court interpreted the *Moorman* court's citation of *Rozny* as limiting the application of negligent misrepresentation to those defendants who are in the business of supplying information.²¹ One of the more influential appellate decisions is *Black, Jackson and Simmons Insurance v. International Business Machines Corporation*.²² In *Black*, the plaintiffs brought an action for negligent misrepresentation, alleging that the defendants induced them to buy computer equipment that failed to perform as expected. The court ruled that, according to *Moorman*, a plaintiff can only recover economic damages under a theory of negligent misrepresentation if the defendants are in the business of supplying information.²³ It concluded that defendants who supply computer equipment are not in the business of supplying information; therefore, the plaintiffs could not maintain a cause of action for negligent misrep-

18. *Id.* at 90, 435 N.E.2d at 453. The court ruled that a plaintiff's cause of action for economic loss due to a defective product lies in contract. *Id.* at 81, 435 N.E.2d at 450. On the other hand, the court held that a tort theory is suited for a plaintiff who has suffered physical injury or property damage. *Id.* The *Moorman* court concluded that the plaintiff's claims were only for economic losses, and, therefore, not recoverable in tort. *Id.* at 86, 435 N.E.2d at 451.

19. *Id.* at 88-91, 435 N.E.2d at 452-53. The court stated that allowing a plaintiff to recover for economic loss under theories of strict liability, negligence, or innocent misrepresentation would cause a manufacturer to become a guarantor that its product would perform satisfactorily throughout its reasonably productive life. *Id.* at 91, 435 N.E.2d at 453. The court declared that such a finding would encroach on the legislature's decision to enact the provisions of the Uniform Commercial Code which deal with economic loss. *Id.*

20. *Id.* at 89, 435 N.E.2d at 452.

21. *E.g.*, *Tan v. Boyke*, 156 Ill. App. 3d 49, 508 N.E.2d 390 (1987) (no cause of action against owner-seller of property because not in the business of supplying information), *appeal denied*, 515 N.E.2d 127 (Ill. 1987); *Wait v. First Midwest Bank/Danville*, 142 Ill. App. 3d 703, 491 N.E.2d 795 (1986) (negligent misrepresentation defendant must be in the business of supplying information); *Richmond v. Blair*, 142 Ill. App. 3d 251, 488 N.E.2d 563 (1985) (cause of action against real estate broker because in the business of supplying information); *Grass v. Homan*, 130 Ill. App. 3d 874, 474 N.E.2d 711 (1984) (negligent misrepresentation defendant must be in the business of supplying information). See *supra* note 6 for additional negligent misrepresentation cases holding that defendants must be in the business of supplying information.

22. 109 Ill. App. 3d 132, 440 N.E.2d 282 (1982). See POLLELE & OTTLEY, ILLINOIS TORT LAW 266 (1985) (*Black* decision has had considerable influence among the Illinois courts).

23. *Black*, 109 Ill. App. 3d at 134, 440 N.E.2d at 282, 283.

resentation.²⁴ Appellate courts quickly adopted the *Black* court's reasoning.²⁵

The appellate courts have routinely considered certain defendants to be in the business of supplying information but have not established a standard to determine what other defendants are included. Since *Moorman*, appellate courts have held that in addition to realtors, securities brokers, accountants, and an art importer²⁶ are in the business of supplying information. On the other hand, the appellate court has also held, subsequent to *Moorman*, that a corporation managing a venture, private home sellers, a manufacturer and seller of roofing materials, and sellers of a computer and software package²⁷ are all not in the business of supplying information. Whether other service-providers, such as banks that give financial and business advice, are in the business of supplying information remains an open question.²⁸

THE PROPER SCOPE OF NEGLIGENT MISREPRESENTATION IN ILLINOIS

The Illinois Appellate Court's reliance on the *Moorman* dicta to limit the scope of negligent misrepresentation is unjustifiable. The *Moorman* court simply stated, in dicta, that "[t]his court has held that economic loss is recoverable where . . . one who is in the business of supplying information for the guidance of others in their business transactions makes negligent representations"²⁹ The court was merely expressing that, in *Rozny*, it allowed the recovery of economic losses against a defendant who happened to be in the business of supplying information. The *Moorman* court did not say that the tort was limited to that type of defendant and the supreme

24. *Id.* at 136, 440 N.E.2d at 284.

25. The following court decisions cited *Black* in holding that defendants have to be in the business of supplying information: *Century*, 158 Ill. App. 3d at 205, 510 N.E.2d at 1274; *Richmond*, 142 Ill. App. 3d at 257, 488 N.E.2d at 567; *Anderson Electric, Inc. v. Ledbetter Erection Corporation*, 133 Ill. App. 3d 844, 850, 479 N.E.2d 476, 480 (1985), *aff'd*, 115 Ill. 2d 146, 503 N.E.2d 246 (1986); *Brumley v. Touche Ross & Co.*, 123 Ill. App.3d 636, 463 N.E.2d 195 (1984); *Knox*, 117 Ill. App. 3d at 308, 453 N.E.2d at 11. Additionally, the District Court for the Northern District of Illinois, in deciding negligent misrepresentation suits, has followed the *Black* decision and similar state appellate court rulings. *Hi-Grade Cleaners, Inc. v. American Permac, Inc.*, 561 F. Supp. 643, 644 (N.D. Ill. 1982).

26. *Duchossois Indus., Inc. v. Stelloh*, No. 87-C-4132, slip. op. at 18 (N.D. Ill. 1988).

27. *Century*, 158 Ill. App. 3d at 182, 510 N.E.2d at 1260 (venture manager); *Tan*, 156 Ill. App. 3d at 49, 508 N.E.2d at 390 (private home seller); *Knox*, 117 Ill. App. 3d at 304, 453 N.E.2d at 8 (vendor of roofing materials); *Black*, 109 Ill. App. 3d at 132, 440 N.E.2d at 282 (seller of computer system); see *supra* note 6 for additional cases.

28. See *Wait v. First Midwest Bank/Danville*, 142 Ill. App. 3d 703, 711, 491 N.E.2d 795, 802-03 (1986) (suggests that bank which assists in financial planning might be in the business of supplying information).

29. *Moorman*, 91 Ill. 2d at 85, 435 N.E.2d at 452.

court did not intend to analyze the scope of negligent misrepresentation.³⁰ Appellate court judges therefore should not have relied on the *Moorman* court's reference to negligent misrepresentation as limiting the scope of the tort.³¹

In developing the tort of negligent misrepresentation, Illinois courts have consistently cited the Restatement of Torts.³² However, Restatement section 552, which recognizes a cause of action for negligent misrepresentation, has been changed significantly. The original version of Section 552 stated that one who negligently supplies false information in the course of his business or profession for the guidance of others in their business transactions can be liable for negligent misrepresentation.³³ The Illinois Appellate Court, in *Penrod v. Merrill Lynch, Pierce, Fenner & Smith*, interpreted this to mean that only those whose business it was to supply information could be liable.³⁴ In the Second Restatement of Torts, published in 1977, Section 552 was substantially modified. The drafters expanded the language of Section 552 to include a cause of action against one who negligently supplies false information *in any transaction in which he has a pecuniary interest*.³⁵ The Restatement Second version of Section 552 thus differs from the original version in that it provides that a person who is not in the business of supplying information can be liable for economic damages by making negligent misrepresentations in, for example, a contractual relationship or other

30. *See id.* The court had no reason to discuss or analyze the scope of negligent misrepresentation because its reference to the tort was mere dicta. *Id.*

31. The Illinois Supreme Court also made a passing reference to the tort of negligent misrepresentation in 1986. In *Anderson Electric, Inc. v. Ledbetter Erection Corp.*, 115 Ill.2d 146, 503 N.E.2d 246 (1986), the supreme court squarely refused to decide whether recovery for negligent misrepresentation is limited to defendants in the business of supplying information. *Id.* The court specifically held that it need not address the issue because the plaintiff failed to allege that the defendants (electrical contractor and manufacturer of electrical devices) made any negligent misrepresentations. *Id.* at 153, 503 N.E.2d at 249.

32. *See, e.g., Black*, 109 Ill. App. 3d at 132, 440 N.E.2d at 282; *Penrod*, 68 Ill. App. 3d at 75, 385 N.E.2d at 376; *Citizens*, 67 Ill. App. 2d at 315, 214 N.E.2d at 612; *Guaranty Bank*, 51 Ill. App. 2d at 412, 201 N.E.2d at 144.

33. RESTATEMENT OF TORTS § 552 (1938).

34. *Penrod*, 68 Ill. App. 3d at 82, 385 N.E.2d at 381.

35. Compare RESTATEMENT (SECOND) OF TORTS § 552 (1977) with RESTATEMENT OF TORTS § 552 (1938) (differences between the two versions of Section 552). For a discussion on Section 552 of the Restatement Second see Comment, *Negligent Misrepresentation In Missouri: Tooling Up for the Tort of the Eighties*, 50 MO. L. REV. 877, 888 (1985) [hereinafter *Tort of the Eighties*].

New Section 552 now provides:

One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information. RESTATEMENT (SECOND) OF TORTS § 552 (1) (1977) (emphasis added).

transaction in which he stands to make money.³⁶

The Illinois Appellate Court has embraced both the older and newer versions of Section 552, but has generally failed to recognize that the newer version permits actions against defendants whether or not they are in the business of supplying information. In *Penrod*, the court held that under the original version of Section 552, a person can be liable for economic damages caused by his negligent misrepresentation only if he is in the business of supplying information.³⁷ The court in *Black* adopted the same interpretation of Section 552, but prefaced its references to *Penrod* by citing Section 552 of the Second Restatement.³⁸ The *Black* decision thus contains a material inconsistency. The court recognized Section 552 of the Restatement Second as controlling, but then interpreted it according to the language of Section 552 in the original Restatement. The *Black* court failed to recognize that under Section 552 of the Second Restatement, one can be held liable for negligently supplying information not only in the course of his business, profession or employment, but also "in any other transaction in which he has a pecuniary interest."³⁹ It is apparent therefore that by improperly interpreting the current version of Section 552, the *Black* court incorrectly analyzed the scope of negligent misrepresentation in Illinois.

The treatment of negligent misrepresentation in other states further indicates how the majority of Illinois appellate court decisions have wrongly limited the scope of the tort. Decisions from other states persuasively suggest that Illinois courts should not interpret *Rozny* and *Moorman* to limit negligent misrepresentation actions to those defendants who are in the business of supplying information. Courts in at least nine states have applied Section 552 of the Restatement to permit a cause of action for negligent misrepresentation against defendants not in the business of supplying information.⁴⁰

36. RESTATEMENT (SECOND) OF TORTS § 552 (1977); *Dousson v. South Cent. Bell*, 429 So.2d 466, 468 (La. Ct. App. 1983) (telephone company liable for negligent misrepresentation due to failure to provide a certain phone number).

37. *Penrod*, 68 Ill. App. 3d at 81, 385 N.E.2d at 381.

38. *Black*, 109 Ill. App. 3d at 135, 440 N.E.2d at 284.

39. For a discussion of § 552 of the Second Restatement, see *infra* note 35.

40. See, e.g., *Robinson v. Doudre Valley Federal Credit Union*, 654 P.2d 861, 863 (Colo. 1982); *Eby v. York-Division, Borg-Warner*, 455 N.E.2d 623 (Ind. Ct. App. 1983); *Dousson v. South Cent. Bell*, 429 So.2d 466 (La. Ct. App. 1983); *Chubb Group of Ins. Cos. v. C.F. Murphy & Assocs., Inc.*, 656 S.W.2d 766, 784 (Mo. Ct. App. 1983); *State Bank of Townsend v. MaryAnn's, Inc.*, 204 Mont. 21, 664 P.2d 295 (1983); *Bank of Nevada v. Butler Aviation - O'Hare, Inc.* 96 Nev. 763, 616 P.2d 398 (1980); *Mathis v. Yondata Corp.*, 125 Misc. 2d 383, 480 N.Y.S. 2d 173 (1984); *Merriman v. Smith*, 599 S.W.2d 548, 557 (Tenn. Ct. App. 1979); *Susser Petroleum Co. v. Latina Oil Corp.*, 574 S.W.2d 830 (Tex. Ct. App. 1978).

For example, in *Mathis v. Yondata Corp.*,⁴¹ a New York court cited Section 552 of the Restatement Second in holding a supplier of computer systems liable for a negligent misrepresentation claim.⁴² On essentially the same facts as *Black*, the *Mathis* court reached the opposite result by correctly interpreting Section 552 of the Second Restatement. Consistent with those decisions in other states, the Illinois Supreme Court in *Rozny* and *Moorman*, did not intend to exclude plaintiffs from suing these types of defendants under the theory of negligent misrepresentation.

The Illinois Appellate Court, in *A, C, & S*, therefore properly ruled that in claims for economic damages, the application of negligent misrepresentation is not limited to defendants who are in the business of supplying information. Other Illinois courts should follow the *A, C, & S* court's lead and broaden the scope of this tort. Courts unduly limiting the application of negligent misrepresentation are in error because the Illinois Supreme Court never intended to so limit the tort. In addition, the more limited rule of *Black* is difficult to apply because there is no clear standard for determining whether a particular defendant is in the business of supplying information. Illinois courts should therefore join those states which have adopted the proper interpretation of Section 552 of the Second Restatement of Torts. The availability of negligent misrepresentation as a cause of action would then be clear: liability could attach to any person who negligently supplies information to others in a transaction in which he has a pecuniary interest.

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41. 125 Misc. 2d 383, 480 N.Y.S. 2d 173 (1984).

42. *Id.* at 385, 480 N.Y.S. 2d at 177.

