

WASHINGTON CASE UPDATE

Only Clients or Intended Beneficiaries of Representation Have Standing for Legal Malpractice Claims

From the desk of Kyle Riley: When an attorney acts negligently, what recourse is available to their client and their client's insurer? The Washington Court of Appeals clarifies who has standing to sue and the duty of care an attorney owes when employing their professional judgment.

Claims Pointer: In Washington, legal negligence claims can only be brought by an attorney's client or by a nonparty who was the intended beneficiary of the attorney's representation. In the context of insurance defense, insurers do not qualify as an intended beneficiary and, therefore, do not have standing to sue. Clients, however, can succeed on a legal negligence claim involving an attorney's professional judgment by proving that the attorney's acts or omissions were either (1) not within the range of reasonable alternatives from the perspective of a reasonable, careful and prudent attorney in Washington or (2) resulted from the attorney's failure to exercise reasonable care.

Clark County Fire Dist. No. 5 v. Bullivant Houser Bailey P.C., --- P.3d ----, 2014 WL 1647530 (Wash. App. Div. 2)

American Alternative Insurance Corporation (AAIC) and their insured, Clark County Fire District No. 5 (Fire District) were represented by Bullivant Houser Bailey P.C. (Counsel) in a sexual harassment suit. Counsel conservatively evaluated the case as a \$370,000 value, with the potential of 50% higher damages at verdict. At trial, the jury's damages award was significantly higher (\$3.2 million). Following the unfavorable award, AAIC and the Fire District brought suit against Counsel for legal negligence.

On a motion for summary judgment brought by Counsel, the trial court dismissed AAIC's claims, holding that AAIC had no standing to sue. The trial court also dismissed the Fire Districts' claims on the grounds that Counsel could not be liable for its professional judgment decisions. AAIC and the Fire District appealed.

The Washington Court of Appeals first examined the dispositive issue of AAIC's standing. Despite the fact that AAIC had retained and paid Counsel, only the Fire District was Counsel's client. A nonclient's ability to bring a legal negligence claim turns on whether or not it qualifies as an intended beneficiary of the attorney's representation. The alignment of interests between an insured and insurer during litigation and the attorney's duty keep the insurer informed of the litigation's progress is not enough to elevate an insurer to the status of an intended beneficiary. As such, AAIC lacked standing to bring a legal negligence claim. The Court of Appeals was reluctant to find that the tripartite relationship between an attorney, insured, and insurer could

ever create a situation where the insurer is an intended beneficiary of the representation.

Continuing its review of the trial court's summary judgment dismissal, the Court of Appeals determined that questions of fact precluded summary judgment on the Fire District's claim. Adopting an "attorney judgment rule," the court announced that "an attorney cannot be liable for making an allegedly erroneous decision involving honest, good faith judgment if (1) that decision was within the range of alternatives from the perspective of a reasonable, careful and prudent attorney in Washington; and (2) in making that judgment decision the attorney exercised reasonable care." As such, a plaintiff could survive summary judgment by offering evidence that either (1) no reasonable Washington attorney would have made the same decision as the defendant attorney or (2) that the defendant attorney breached the standard of care when making the judgment decision.

The Fire District presented the opinions of three experts to support their claim that Counsel's settlement evaluation was negligent. Each expert opined that Counsel had breached an attorney's standard of care by underestimating the value of the plaintiffs' claims. Furthermore, the court inferred from the experts' opinions that no reasonable attorney would have evaluated the claims similarly. The experts' opinions were sufficient evidence of Counsel's negligence to survive summary judgment and reverse the lower court's dismissal of the claim.

case in point...



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