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## Legal Malpractice Claim Is Assignable in the Context of a Commercial Transaction

February 27, 2013

[\*St. Luke's Magic Valley Regional Medical Center v. Luciani\*, 2013 WL 275974 \(Idaho\)](#)

### Brief Summary

Upon certified question from the U.S. District Court for the District of Idaho, the Idaho Supreme Court determined that a legal malpractice cause of action could be assigned in the specific context of a commercial transaction, along with other business assets and liabilities, and that such an assignment did not trigger the public policy considerations generally preventing the “freestanding” assignment of a legal malpractice claim.

### Complete Summary

Defendant attorney represented a hospital in the defense of an employment-related lawsuit. During the course of the litigation, the hospital decided to terminate the attorney and hire new counsel. Thereafter, the hospital was sold through a sale and lease agreement to another group of hospital entities for the purpose of creating a new hospital system. In summary, the intent of the agreement was that all property and interests of the hospital be “leased, sold, assigned, licensed or transferred . . . whether known, contingent or otherwise.” At the time, the new hospital system knew of the underlying litigation, the representation by the attorney and the hospital’s decision to replace him. After the sale, the new hospital took over the defense of the underlying litigation and ultimately settled the case. The new hospital then sued the attorney and his law firm for legal malpractice in a diversity action in federal court.

Defendants moved for summary judgment and argued that the assignment of the legal malpractice claim was invalid in Idaho as a matter of law. Not finding controlling Idaho law that presented similar circumstances, the district court certified the question to the Idaho Supreme Court. The question was whether the new hospital could step into the shoes of the prior hospital’s legal malpractice claim in light of the broad language used in the agreement, or whether legal malpractice actions are not assignable as a matter of law.

Although in Idaho legal malpractice claims are generally not assignable, the facts before the Court presented circumstances where plaintiff was a successor in interest to the hospital through a commercial transaction and was not a stranger to the litigation. Recognizing that most jurisdictions hold that legal malpractice claims are not assignable, the Court narrowed its inquiry to circumstances where the assignment was the product of a commercial transaction along with other assets and liabilities. The Court found that in those cases, assignments are allowed. The Court distinguished between “market



assignments involving purely economic transactions” and “freestanding” legal malpractice claim assignments, which implicate the unique characteristics of an attorney-client relationship.

The Court agreed that while legal malpractice claims are generally not assignable, where the legal malpractice claim is transferred in a commercial transaction along with other assets and liabilities, the claim can be assigned. It further found that the considerations set forth in *Goodley v. Wank & Wank, Inc.*, 133 Cal. Rptr. 83, 87 (Cal. App. 1976) were not implicated where the legal malpractice claim was transferred along with other rights and obligations. *Goodley* involved an underlying divorce action and a claim against an attorney by someone other than the client. The *Goodley* court expressed concern that allowing assignment of legal malpractice claims would undermine the unique quality and confidentiality of the attorney-client relationship, and would allow legal malpractice claims to become commodities to be bartered in the market place and sold to persons who never had a relationship with the lawyer.

The assignment in this case, however, did not trigger those public policy considerations because rather than being an isolated assignment, it was part of a comprehensive transfer of assets and liabilities, and the new hospital was intimately connected to the underlying litigation, having taken over its defense. The Court opined that while an assignment in this case would not negatively impact public perception of the legal profession, forbidding assignment under the circumstances would leave clients without recourse and reinforce the perception that “courts will go out of their way in order to protect members of the bar.” *Bishop v. Owens*, 152 Idaho 616, 626, 272 P.3d 1247, 1257 (2012). Thus, the Court concluded there were no public policy concerns disfavoring the assignment of a legal malpractice claim in the context of the commercial transaction in this case. It therefore held that the new hospital could step into the former hospital’s shoes to pursue the legal malpractice claim.

### **Significance of Opinion**

This opinion reinforces the decisions of a handful of other state supreme courts, which have determined that a legal malpractice claim may be assigned as part of a commercial transaction, along with other assets and liabilities. The case represents a developing trend to allow the assignment of a legal malpractice claim where there is a direct transfer of assets and liabilities to a successor in interest in the commercial context.

For further information, please contact [Terrence P. McAvoy](#) or [Patricia Lynch Franklin](#).

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