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Jury Rejects Claim that Law Firm Committed Malpractice by failing to Advise Former Client to Tender Claim to Insurer for Employment Discrimination Suit

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Landmark Worldwide, LLC. v. Seyfarth Shaw, LLP, Case No. BC635695, Cal. Super. June 29, 2018

Brief Summary

A Los Angeles jury rejected plaintiff's claim that the defendant law firm committed malpractice by not advising it to claim insurance for an employee discrimination suit. Defendant argued and ultimately convinced a jury that it was never the firm's job to ensure plaintiff maintained and claimed insurance coverage in the suit with former employee.

Complete Summary

Plaintiff filed a three-count legal malpractice action against the defendant, alleging defendant failed to preserve and protect plaintiff's interests and rights to insurance policy benefits. Plaintiff brought the following causes of action: (1) legal malpractice; (2) breach of fiduciary duty; (3) breach of contract; and (4) breach of implied covenant of good faith and fair dealing.

Plaintiff argued that defendant owed them a duty to provide advice regarding potential insurance coverage for the employment discrimination action; that defendant breached that duty; and that plaintiff thereby lost coverage for their defense fees and expenses in connection with the underlying litigation. Plaintiff sought recovery of the \$1.85 million for the settlement amount plus approximately \$800,000 in defense fees paid to defendant and subsequent counsel in connection with the employment discrimination case.

Defendant denied all wrongdoing, cross-claimed for \$133,000 in unpaid fees, and argued that its former client's own negligence was the sole cause of the lack of insurance coverage for the settlement in the underlying lawsuit.

The Underlying Employment Discrimination Suit

A former employee of plaintiff sued the company for employment discrimination alleging that the female employee's supervisor asked if doctors would "cut it off" when discussing her breast cancer diagnosis. Plaintiff, who was insured, never tendered the claim to its carrier and blamed defendant's alleged avoidance of

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the topic as the reason for the lack of coverage. Plaintiff did eventually seek to have the claim covered but discovered that the policy had expired. As a result, plaintiff was left to pay the \$1.85 million settlement with its former employee.

Plaintiff sought punitive damages on the alleged breach of fiduciary duty claim. As part of that claim, plaintiff alleged that defendant intentionally avoided raising the option of insurance coverage so that they could bill plaintiff at a higher, non-insured rate. Plaintiff argued that defendant, who has qualified as panel counsel for various insurers, purposefully avoided entering into a panel counsel agreement which could have included:

(1) adherence to established guidelines and billing practices (*i.e.*, prohibiting block billing) not required in other attorney-client relationships; (2) extended payment and costs reimbursement deadlines; (3) detailed, company-driven audit of firm invoices designed to eliminate payment of potentially unnecessary, duplicative and/or overbilled tasks and services, which insurers typically then deduct unilaterally from the law firm's invoices, pending an appeal process; (4) the possibility that the defense of a particular matter may be transferred for handling to a competitor in the discretion of the insurer, thereby depriving the law firm of the future earnings generated; and, of course (5) the addition of one or more skilled insurance professionals to a matter with opinions concerning the correct handling of the matter (*i.e.*, a discovery dispute over insurance information) which may vary from those of the law firm.

In rebutting plaintiff's argument, defendant argued they owed no duty to advise plaintiff regarding insurance coverage, and the failure to obtain insurance fell squarely on plaintiff's shoulders.

Prior to the case being given to the jury, the trial judge granted defendant's motion to strike the request for punitive damages on grounds that plaintiff failed to meet the evidentiary burden to support such a claim.

After a two-week trial, the jury found that the defendant used the skill that a "reasonably careful attorney" would have used in similar circumstances, and did not breach its fiduciary duty to plaintiff by failing to advise plaintiff to tender the claim.

The jury determined that plaintiff alone was responsible for the failure to tender—and went one step further in holding that plaintiff did not even believe defendant was required to advise them regarding potential insurance coverage. As a result, the jury awarded a judgment for defendant in the amount of \$133,000 for unpaid legal and defense fees.

Significance of Opinion

This case examined the scope of a lawyer's duty to their client, particularly with respect to insurance defense matters. In the closing argument to the jury, defense counsel argued that defendant's role was that of employment counsel and not insurance adviser to plaintiff. In this particular case, the jury agreed with the defendant.

For more information, please contact Terrence P. McAvoy.