



Alerts

Attorney Cannot Recover From Former Client for Loss of Future Fees

November 30, 2010

Lawyers for the Profession® Alert

Guest v. Allstate Insurance Co., Nos. 31,602/31,603 (N.M. Oct. 25, 2010)

Brief Summary

After an insured couple sued both their insurance company and the company's lawyer, the company agreed to represent and indemnify the attorney. The lawyer stopped accepting work from the company when she perceived that the company breached that agreement. The lawyer then sued the insurance company for the alleged breach and based her damages in part on the fees she would have earned had she continued to work for the company. Based on fundamental ethical and equitable principles related to the attorney-client relationship, the New Mexico Supreme Court held that attorneys may not recover such damages.

Complete Summary

Insured individuals sued their insurance company, and also the lawyer who represented it for her role in arbitration proceedings on the insurer's behalf. The attorney insisted that the insurance company should provide her with representation and indemnification. The company initially agreed to do so but later wavered in its commitment. Because the lawyer considered the insurance company's actions to constitute a breach of contract, she became concerned that a conflict of interest was developing and therefore refrained from accepting additional legal work from the company and returned almost all of her active cases to it.

The attorney then sued her former client, the insurance company, for breach of contract. The lawyer recovered a multimillion dollar jury award at trial. Most of the damages were tied to what the attorney would have earned in the future from representing the company had she not been allegedly forced to withdraw from the representation by the company's acts.

The New Mexico Supreme Court affirmed the company's liability for breach of contract, but held that the attorney could not recover damages from the insurance company for future legal work that was never performed. On the former issue, the Court rejected the company's argument that a ruling in the lawyer's favor would violate public policy because the attorney's litigation conduct allegedly violated the rules of professional responsibility. On this point, the Court noted that although it did not condone the lawyer's conduct, it was not

Service Areas

Counselors for the Profession

Lawyers for the Profession®

Litigators for the Profession®



hearing a disciplinary matter. Accordingly, the Court deferred to the jury's findings.

On the damages issue, the Court stated that requiring a client to pay unearned legal fees would undermine the trust that is essential to the attorney-client relationship. The Court tied this general principle to both the client's unconditional right to terminate the attorney-client relationship — which would be hindered if such damages were allowed — as well as multiple cases holding that fee awards against clients must be limited to *quantum meruit*.

Finally, the Court held that the contract at issue was an “insurance contract” under New Mexico’s statutory definition of that term. This meant that the lawyer could argue for statutory attorney fees on remand.

Two of the Court’s justices dissented, arguing that the insurance company had completely fulfilled its contractual obligation by obtaining a no-cost, no-liability settlement offer from the opposing party in the underlying litigation.

Significance of Opinion

This decision reaffirms the central role that *quantum meruit* often plays in fee disputes between attorneys and clients. More importantly, based on the underlying nature of the attorney-client relationship and the rights of the client in that relationship, including the right to terminate it at will, this decision stands for the proposition that attorneys consequently will be precluded from recovering for lost future earnings from clients when the work was not and would not be actually performed.

This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.