



Alerts

Loss of Chance Doctrine May Apply to Legal Malpractice

September 16, 2010

Lawyers for the Profession® Alert

Rivers v. Moore, Myers & Garland, LLC, 236 P.3d 284 (2010)

Brief Summary

The Wyoming Supreme Court held that the “loss of chance” doctrine could not be applied to assess damages in a legal malpractice action. The Court left open the possibility that the doctrine could apply, under different circumstances, in the legal malpractice context.

Complete Summary

In the matter underlying this legal malpractice action, plaintiff (the client) retained defendant law firm to acquire property on which the client planned to build a 10,000 square foot building. Due to a restrictive covenant, the client was ultimately limited to 5,000 square feet. The client then brought the present action alleging, *inter alia*, expectancy damages based on his inability to build a larger building. The firm moved for partial summary judgment on the issue of expectancy damages, and the trial court granted this motion. The client appealed, arguing, *inter alia*, that issues of fact remained under the loss of chance doctrine.

The Wyoming Supreme Court affirmed, and held that the loss of chance doctrine did not apply to this case. But the Court left open the possibility that the doctrine could apply elsewhere in the legal malpractice context. The loss of chance doctrine, which the Court had previously applied only in medical malpractice cases, allows a plaintiff to recover for reduced chances of survival.

The Supreme Court framed the doctrine here as an alternative to the usual case-within-a-case approach to legal malpractice. Whereas loss of chance requires the calculation of odds based on extensive available data, the high court noted, the case-within-a-case approach involves a one-off determination based primarily on human interactions. In the absence of statistical information relevant to the likelihood of prevailing on a specific legal claim, the Court held that basing damages on loss of chance was too speculative, and that the consequent failure of proof on causation entitled the law firm to summary judgment.

Significance of Opinion

This opinion clarifies that the availability of the loss of chance doctrine turns on the availability of relevant statistical data. It leaves open the possibility of applying the doctrine only to the extent such data could be available as to

Service Areas

Counselors for the Profession

Lawyers for the Profession®

Litigators for the Profession®



certain legal claims.

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.