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Illinois Supreme Court Addresses Calculation of Damages in Legal Malpractice Action

October 14, 2014
Lawyers for the Profession® Alert

Goldfine v. Barack, Ferrazzano, Kirschbaum & Perlman, 2014 IL 116362, ___ N.E.3d ___, 2014 WL 4923213

Brief Summary

The Illinois Supreme Court addressed the proper calculation of damages in a legal malpractice action arising out of defendants' failure to preserve plaintiffs' Illinois Securities Law cause of action against an investment firm.

Complete Summary

In this legal malpractice action arising out of plaintiffs' loss of a claim under the Illinois Securities Law of 1953, the Illinois Supreme Court rejected defendant's arguments that it was being punished for securities violations rather than subject to compensatory damages for professional negligence. The legal malpractice action stemmed from plaintiffs' stock purchases made between 1987 and 1990, which gave rise to claims against an investment firm, a broker and others. Plaintiffs retained defendant law firm to pursue their claims after the investments proved worthless as a result of the bankruptcy of the company whose stock plaintiffs purchased in 11 transactions. Plaintiffs had a claim for rescission under the Illinois Securities Law; however, claims against the broker defendants were dismissed based upon the law firm's failure to serve the rescission notice required by the statute.

Plaintiffs retained other counsel to appeal the trial court's dismissal of the action and sued defendant law firm and several of its partners for the damages they would have recovered had the action been preserved. At defendants' request, the trial of the legal malpractice action was stayed while plaintiffs pursued their claim against the broker. In that action, the appellate court affirmed the dismissal of the Securities Law claim, but reinstated common law and statutory fraud claims. Plaintiffs ultimately settled the claim against the broker for $3.2 million and proceeded to a bench trial on the legal malpractice claim. The trial court entered judgment in plaintiffs' favor in the amount of approximately $5.9 million, after calculating the value of the lost statutory action to include the purchase price of the stock, $4.5 million, reduced to reflect the settlement recovered from the underlying case, plus 10 percent interest and attorneys' fees and costs.

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Both plaintiffs and defendants appealed. The appellate court affirmed the trial court's findings on liability but held that the trial court erred in its calculation of damages. The appellate court held that the trial court should not have deducted the settlement from the amount plaintiffs paid for the stock before calculating interest and attorneys' fees. It also held that plaintiffs were entitled to fees and costs for the appeal.

The Illinois Supreme Court agreed with the appellate court that the civil remedies provided in the Illinois Securities Law defined the amount that plaintiffs would have recovered in the underlying case, and therefore established the amount of actual damages in the legal malpractice action. Critical to the Supreme Court's analysis was that the civil remedy provisions set forth in the applicable statute, 815 ILCS 5/13(A), are remedial, not punitive. The Court noted that punitive damages are automatic, predetermined damages, whereas remedial damages are calculated by proof of actual damages. Based on this distinction, the Supreme Court held that Illinois' statutory bar to the recovery of punitive damages in legal malpractice actions, 735 ILCS 5/2-1115, was not applicable. The Court also distinguished its decision in *Tri-G v. Burke, Bosselman & Weaver*, 222 Ill. 2d 218 (2006), where it had ruled that pursuant to Section 2-1115, punitive damages lost in an underlying case as a result of an attorney's negligence are not recoverable in a subsequent legal malpractice action. The Court also found that its ruling in *Tri-G* that precluded an interest award was not applicable here. The Court reasoned that in *Tri-G*, the interest sought was on a hypothetical judgment. Here, however, the interest award sought under the Securities Law pertained to plaintiffs' investment in securities.

The Illinois Supreme Court also rejected defendants' argument that the amount that plaintiffs recovered from the settlement of the underlying case should be excluded from the interest calculation. The Court found that plaintiffs would have received statutory interest on the entire amount they paid for the securities had defendants preserved the Illinois Securities Law action. The Court thus found that including the settlement sum in the interest calculation was consistent with the Court's decision in *Eastman v. Messner*, 188 Ill. 2d 404 (1999), which limits a plaintiff's recovery in a legal malpractice case to the amount that would have been actually recovered in the successful pursuit of the underlying case. The Supreme Court cut off the recovery of interest on the date of the underlying casesettlement pursuant to *Eastman* and rejected plaintiffs' argument that the interest should run until the date of judgment, four years later, in the legal malpractice case. The Court also rejected plaintiffs' contention that only the amount they actually received from the settlement should be deducted; the Court held that the judgment should be reduced by the entire amount of the settlement. Finally, the Supreme Court left the issue of the amount of attorneys' fees and costs that were recoverable for the trial court to address on remand.

Significance of Opinion

This decision is significant because the Illinois Supreme Court addressed the proper calculation of damages in a legal malpractice action which arose out plaintiffs' statutory cause of action (a Securities Law claim) and held that the amounts recoverable are those that plaintiffs would have recovered in the underlying case.

For more information, please contact Terrence P. McAvoy

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