



## Alerts

### Failure to Demand a Jury is Too Speculative to Support Legal Malpractice Claims

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*Lawyers for the Profession® Alert*

*Colonial Freight Systems, Inc. v. Adams & Reese LLP*, 2012 WL 1570103 (E.D. La.)

#### Brief Summary

The U.S. District Court for the Eastern District of Louisiana held that defendant lawyers' alleged failure to demand a jury was too speculative to support plaintiff client's legal malpractice claims, and those claims were thus dismissed with prejudice.

#### Complete Summary

The client was a defendant in an underlying case that ultimately settled. The client alleged that defendant lawyers were negligent in the underlying case, and that they engaged in unauthorized billing and charged excessive fees. The client contended that due to the lawyers' alleged negligence, it lost the opportunity to request a jury trial. The client argued that it felt it had no choice but to settle the underlying case because of a fear that refusing the judge's suggested settlement would work against it at trial. The lawyers filed a motion for summary judgment that addressed only the legal malpractice claims based on the settlement of the underlying case; it did not address any allegations regarding the lawyers' billing practices.

The court initially noted that to establish a valid legal malpractice claim under Louisiana law, a plaintiff must prove: (1) the existence of an attorney-client relationship; (2) negligent representation by the lawyer; and (3) loss caused by the negligence. In limited circumstances, courts may presume damages once the plaintiff establishes that an attorney-client relationship existed and that the defendant was negligent. *Jenkins v. St. Paul Fire & Marine Ins. Co.*, 422 So.2d 1109 (La. 1982). The court held that *Jenkins* did not apply, and there was thus no presumption of damages in the client's favor.

The client argued that its decision to settle the underlying case was not voluntary, and that it settled because it feared that refusing the suggested settlement would work against it at trial. The court noted that inherent in that argument was the suggestion that the judge would have been unable to adjudicate the case against the client impartially and objectively had the client not settled. The court held that any argument about what the judge would have done versus what a jury would have done was speculative in nature, and

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contrary to the basic policy that either a judge or a jury would be equally fair as a fact finder. The client was thus unable to prove causation of a loss, and the court granted summary judgment against the client on its legal malpractice claims.

### **Significance of Opinion**

This decision is noteworthy because the court recognized that an attorney's alleged failure to demand a jury trial is simply too speculative to form the basis of a legal malpractice claim. See also *Jones Motor Co., Inc. v. Holtkamp, Liese, Beckemeir & Childress, P.C.*, 197 F.3d 1190 (7th Cir. 1999) (attorneys' alleged negligence in failing to demand a jury trial in underlying personal injury case insufficient to sustain a malpractice claim absent credible evidence of what a jury might have awarded in the underlying suit).

For further information, please contact [Terrence P. McAvoy](#).

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