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Newsletters

Lawyers' Professional Liability Update - January 2010

January 29, 2010

Duty

Law Firm That Represented Limited Partnership Does Not Owe Fiduciary Duties to Limited Partners

Eurycleia Partners, LP v. Seward & Kissel, LLP, 12 N.Y.3d 553 (2009)

In summary, the court held that a law firm which represented a limited partnership did not owe fiduciary duties to the limited partners. The law firm, Seward & Kissel, LLP, drafted the offering memorandum and regular updates for hedge fund Wood River Partners, LP (Wood River). Wood River's general partner then violated the terms of the offering memorandum and was ultimately convicted of securities fraud. The fund's limited partners then sued Seward & Kissel, alleging, inter alia, fraud and breach of fiduciary duty because the law firm knew of and aided in the general partner's transgressions.

Insurance

Court Holds That Statute Trumps Policy Limitations

McCabe v. St. Paul Fire and Marine Ins. Co., 25 Misc.3d 726, 884 N.Y.S.2d 634 (2009)

A New York trial court held that N.Y. Ins. Law § 3420(a) prevailed over the requirement that the claim be reported within the specified time in the policy. The statute stated that it applied to policies "insuring against liability for injury to person . . ." If so applicable, N.Y. Ins. Law § 3420(a)(4) provides:

A provision that failure to give any notice required to be given by such policy within the time prescribed therein shall not invalidate any claim made by the insured, an injured person or any other claimant if it shall be shown not to have been reasonably possible to give such notice within the prescribed time and that notice was given as soon as was reasonably possible thereafter.

Insurance

California Adopts Disclosure of No Professional Liability Insurance Rule

On August 26, 2009, the Supreme Court of California entered an order adopting new Rule of Professional Conduct 3-410, effective January 1, 2010. Rule 3-410 requires attorneys to inform a client in writing, at the time of the client's engagement, if the lawyer does not have professional liability insurance.

Service Areas

Appellate

Lawyers for the Profession®

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Discipline / Sanctions

Attorney Sanctioned for Moving for Sanctions
Northwest Bypass Group v. U.S. Army Corps of Engineers, 569 F.3d 4 (1st Cir 2009)

In summary, an attorney who moved for sanctions based on uninvestigated allegations of criminal misconduct was himself sanctioned because his motion lacked any factual basis. The Northwest Bypass Group was formed to challenge a bypass project in Concord, New Hampshire. Attorney Gordon Blakeney spearheaded the group. After the group sued the Army Corps of Engineers and the city of Concord in federal court, two of the supposed members of the group, the Tuttles (who were engaged in separate negotiations with the city), told the city that they were not involved in the lawsuit.

"But for" Causation

Client's Failure to Pursue Alternative Forum Does Not Excuse Attorney Negligence
Williams v. Joynes, 278 Va. 57, 677 S.E.2d 261 (2009)

In summary, in a legal malpractice action based on a law firm's untimely filing of a lawsuit, the court held that the client's failure to bring suit in an alternative forum with a longer statute of limitations was not a superseding cause. The client, Leo Williams, retained legal counsel to pursue a personal injury action in Virginia against two drivers, one from Virginia and the other from Maryland. Williams' counsel failed to timely file the Virginia action but advised him that a Maryland action could still be timely filed against the Maryland resident. After trying and failing to engage a Maryland attorney, Williams brought a legal malpractice action against his Virginia attorneys.

Miscellaneous / Vicarious Liability

Law Firm Cannot Be Directly Liable for Malpractice and Can Only Be Vicariously Liable If One of Its Principals or Associates Is Liable
National Union Fire Ins. Co. of Pittsburgh, PA v. Wuerth, 122 Ohio St. 3d 594, 913 N.E.2d 939 (2009)

In summary, under Ohio law, a law firm cannot be held directly liable for malpractice and can only be held vicariously liable if one or more of its attorneys is liable for malpractice. National Union Fire Insurance Company (National Union) retained a law firm, Lane, Alton & Horst, L.L.C. (Lane Alton), to represent several of National Union's insureds. Lane Alton assigned the case to Richard Wuerth, who subsequently had to be replaced midway through litigation due to a health issue. After Lane Alton lost the lawsuit, National Union sued both Wuerth and Lane Alton for legal malpractice. The district court dismissed Wuerth, but not Lane Alton, on statute of limitations grounds.

Duty

Class Counsel Do Not Automatically Owe a Heightened Duty to Less Capable Class Members
Martorana v. Marlin & Saltzman, 96 Cal. Rptr. 3d 172 (Cal App. 2009)

In summary, the court held that class counsel did not breach any duty to a class member who failed to claim his portion of the class settlement because class counsel had complied with the judicially approved settlement notice procedure and did not know of the class member's alleged inability to comply with settlement notice procedures.

Privilege

Scope of "At Issue" Waiver of Attorney-Client Privilege Is Limited
Nomura Capital Corp. v. Cadwalader, Wickersham & Taft LLP, 62 A.D.3d 581, 880 N.Y.S.2d 617 (2009)

In summary, a client put the advice of its former law firm at issue in litigation, thus waiving the attorney-client privilege. The client then sued the former law firm (second litigation), and the former firm was denied discovery of attorney-client communications from the first litigation because such communications were never at issue.

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