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Negligent Attorney Not Entitled to Setoff For His Attorney's Fees

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Hook v. Trevino, ___ N.W.2d ___, 2013 WL 5951534 (Iowa Nov. 8, 2013)

Brief Summary

In its review of two questions of first impression, the Iowa Supreme Court: 1) accepted the majority view that no setoff is available to a negligent lawyer; and 2) court awarded interest to the legal malpractice plaintiff from the likely date of the judgment in the underlying case.

Summary

Plaintiff was injured in a car accident. An attorney, ("Attorney"), filed a complaint against the driver of the car, a volunteer for the Iowa Department of Human Services, but failed to name the State of Iowa until after the statute of limitations had expired. The driver was dismissed on the volunteer-immunity defense.

Plaintiff hired new counsel and sued Attorney, asserting that Attorney was negligent in investigating the potential parties to the suit, resulting in the loss of Plaintiff's award against the State of Iowa. At trial, Plaintiff made no offer of proof regarding interest on the potential award or the date the underlying case would likely have gone to verdict.

The jury found Attorney negligent, and awarded a total of $473,000. The court added interest from June 23, 2010, the date the malpractice action was filed. Attorney filed motions seeking to offset the verdict amount by the contingent fee he would have earned in the underlying case. Plaintiff filed a motion seeking interest running from the date the original case would have been tried. Both were issues of first impression for the Iowa Supreme Court.

On the offset issue, the court accepted the majority view that refuses to deduct the negligent lawyer's fee in calculating damages recoverable by the plaintiff. It reasoned that if the "net amount were all the plaintiff could recover in the malpractice action, the defendant lawyer would be credited with a fee that the lawyer never

earned, and the plaintiff would have to pay two lawyers (the defendant lawyer and the plaintiff's lawyer in the malpractice action) to recover the judgment." Although not supported by any facts in this case, the court specifically left open the possibility of a setoff based upon *quantum meruit*.

As to the interest issue, the court reasoned that in legal malpractice cases, "the measure of damages is what the plaintiff was entitled to recover in the underlying tort action," including statutory interest. Under the Iowa statutes, interest runs from the date of the judgment. Accordingly, because the plaintiff prevailed on the case within the case, interest on the award should be calculated from the likely date the judgment would have been entered in that case.

Rather than remand for findings or additional evidence, the court relied upon Iowa statutes to set the likely date of judgment. It began with the last date a timely claim could have been made against the State of Iowa, added six months for state's appeal board review, another six months for filing after appeal board disposition, and 18 months as the time in which Iowa civil actions are required to be tried. According to its math, the underlying action would "most likely" have been tried by December 9, 2004. The court awarded interest from that date.

Significance of Opinion

This decision is significant because it brings Iowa in line with the majority view that no setoff is available for a negligent attorney's fees in a legal malpractice action, and because it lessens the burden on legal malpractice plaintiffs to provide evidence regarding the likely date of judgment in the underlying case. Other jurisdictions, like Illinois, do not allow prejudgment interest in legal malpractice actions absent a specific statute or agreement that provides such relief.

For more information, please contact Terrence P. McAvoy.

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