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Fifth Circuit Affirms Broad Scope of Attorney Immunity Defense in Legal Malpractice Case

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Jan 10, 2019

Ironshore Europe DAC v. Schiff Hardin, LLP, No. 18-40101 (5th Cir. 2019)

Brief Summary

Plaintiff, an excess insurer, filed suit against a law firm for negligent representation arising out of the firm's alleged misstatements and omissions in the course of reporting on the litigation against plaintiff's insured. The district court denied defendant's motion to dismiss based on attorney immunity defense. The Fifth Circuit reversed, however, and found that the law firm's conduct fit squarely within the scope of the firm's representation of its client.

Complete Summary

Plaintiff issued a policy of excess insurance to Dorel Juvenile Group, Inc. ("Dorel").The policy contained an "assistance and cooperation" provision which gave plaintiff the right to associate with Dorel in the defense of any claim and required Dorel to cooperate in the event plaintiff exercised that right and to promptly provide any litigation-related information requested by plaintiff. Dorel was later sued in the Eastern District of Texas for its design, marketing, and sale of a forward-facing car seat after a one-year old child suffered a paralyzing spinal cord injury and a brain injury in a car accident. Defendant was retained by Dorel to defend the lawsuit.

Defendant provided plaintiff with information about the litigation, including developments in the litigation and defendant's opinions of the settlement value and potential judgment value of the case. The case went to trial and the jury rendered a verdict against Dorel and awarded total compensatory damages of $24,438,000 and an additional $10 million in exemplary damages. Plaintiff then retained its own counsel and the parties participated in post-trial mediation, during which a confidential settlement was agreed upon in an amount that reached plaintiff's policy.

Plaintiff then sued defendant for negligent misrepresentation. Plaintiff alleged that the firm made various misrepresentations and omissions in the course of reporting on the case to plaintiff, including making false

statements in verbal and written reports and failing to disclose certain information about the underlying suit's facts and settlement and judgment value. Further, plaintiff argued that it relied—to its detriment—on the negligent misrepresentations and, that had it known the true facts about the developments in the lawsuit, settlement offers, and the danger of triggering its policy, it would have settled the underlying case for a much lower amount than the ultimate verdict or post-verdict settlement.

Defendant moved to dismiss the complaint, asserting that it was entitled to attorney immunity because any communications with plaintiff were part of the discharge of the firm's duties to its client, Dorel. The district court denied the motion and defendant appealed.

The Fifth Circuit reversed the district court's denial of the motion and rendered judgment dismissing the complaint. The court's analysis began with the question of whether the attorney immunity doctrine under Texas law shields an attorney against claims by a non-client based on negligent misrepresentation made in the course of counsel's representation of his clients. Having found no decisions from the Supreme Court of Texas that directly address this issue, the court made an *Erie* prediction (see *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938)) that the Supreme Court of Texas would apply the attorney immunity doctrine to shield attorneys from such negligent misrepresentation claims.

Next, the court addressed whether the requirements of attorney immunity were satisfied. The court noted that whether an attorney's conduct was in the scope of his representation of a client is a legal question. The conduct at issue included reporting on the status of the litigation, providing opinions on litigation strategies, providing estimates of potential liability, reporting on the progress of the trial and reporting on pre-trial rulings and settlement offers. Ultimately, the Fifth Circuit found that the conduct at issue fell within the routine conduct attorneys engage in when handling this type of litigation, and defendant's conduct fell within the scope of the firm's representation of Dorel.

Significance of Opinion

By extending the applicability of the attorney immunity doctrine to negligent misrepresentation claims filed by non-clients and linking the firm's alleged misrepresentations to the firm's representation of a client, the court underscored the broad scope of the attorney immunity defense.

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