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Gallagher Sharp Newsflash: Legal Malpractice

The Supreme Court of Ohio announced this morning (June 18, 2008) its decision in *Paterek v. Peterson & Ibold*, 2008-Ohio-2790, an important legal malpractice case concerning the measure of damages recoverable as a result of an attorney's negligence.

A negligent tortfeasor injured Mr. Paterek in an automobile accident. The tortfeasor had no personal assets or earning capacity with which to compensate Paterek for his injuries, but did carry \$100,000 of auto liability coverage. The underlying personal injury case was dismissed as a result of attorney negligence in failing to timely refile the case within one year of the dismissal.

The jury in the legal malpractice trial returned a verdict of \$382,000 in favor of the legal malpractice plaintiff. The verdict accounted for all the damages allegedly suffered by Paterek as a result of the tortfeasor's negligence in the automobile accident. The trial court granted a motion for judgment notwithstanding the verdict filed by the defendant lawyers seeking to have the recovery restricted to the \$100,000 liability policy limits maintained by the original tortfeasor. In a two-to-one decision, the 11th District Appellate Court reversed and reinstated the verdict at \$382,000, citing *Vahila v. Hall*, 77 Ohio St.3d 421, 1997-Ohio-259, 674 N.E.2d 1164, and holding that a legal malpractice plaintiff was not required to prove the "case within the case."

Justice Pfeifer, writing for the majority, stated that the legal malpractice case was not about what Paterek suffered on account of the original tortfeasor's bad driving, but what was suffered on account of the bad lawyering. The proper inquiry being: Had the lawyer not been negligent, how much could have been received from a settlement or judgment? *Paterek* at ¶30.

The Court, in adopting the majority view, held "that in an attorney-malpractice case, proof of the collectibility of the judgment lost due to the malpractice is an element of the plaintiff's claim against the negligent attorney." *Paterek* at ¶1. It is not something simply to be ignored.

Justice Pfeifer wrote: "We find that collectibility is logically and inextricably linked to the legal-malpractice plaintiff's damages, for which the plaintiff bears the burden of proof. In proving what was lost, the plaintiff must show what would have been gained." *Id.* at ¶37. In so doing, the Court not only rejected the argument that collectibility is not relevant based upon *Vahila*, but also disagreed with the minority view on collectibility, that it is an affirmative defense pursuant to which the defendant lawyer bears the burden of proof.

With *Paterek*, the Supreme Court has taken an important step in clarifying *Vahila*. Since the decision in *Vahila* was announced over a decade ago, lower courts have struggled with the required standard of proof in legal malpractice cases in Ohio.

Gallagher Sharp filed an Amicus Brief urging the Supreme Court to adopt the majority view. The Supreme Court of Ohio has accepted another legal malpractice case for review this year and we

anticipate further clarification regarding the required standards of proof in legal malpractice claims.

The decision can be found at:

<http://www.sconet.state.oh.us/rod/docs/pdf/0/2008/2008-ohio-2790.pdf>

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