

SUPREME COURT OF LOUISIANA

Marrogi v. Howard

805 So. 2d 1118 (La. 2002) · No. 2001-CQ-1106 · Decided January 15, 2002

SUMMARY

The Supreme Court of Louisiana answered a certified question from the United States Court of Appeals for the Fifth Circuit concerning whether witness immunity bars a malpractice or contract claim by a client against a retained expert witness. The court held that witness immunity does not shield a retained expert from claims alleging deficient performance of professional and contractual litigation-support duties. The court distinguished retained experts from adverse witnesses and court-appointed professionals entitled to immunity.

CASE DETAILS

COURT	Supreme Court of Louisiana
WRITING FOR THE COURT	Calogero, Chief Justice; Retired Judge Robert L. Lobrano, Justice Pro Tempore
JURISDICTION	Louisiana
DECIDED	January 15, 2002
DOCKET	2001-CQ-1106
DISPOSITION	other
PROCEDURAL POSTURE	The Supreme Court of Louisiana answered a certified question from the United States Court of Appeals for the Fifth Circuit concerning whether Louisiana's witness-immunity doctrine bars a client's negligence, breach-of-contract, or unjust-enrichment claims against a retained expert for deficient litigation-support services.
STANDARD OF REVIEW	De novo review of the legal question certified by the Fifth Circuit and the application of Louisiana witness-immunity law; the court also declined to revisit the federal courts' personal-jurisdiction ruling.
PRECEDENTIAL VALUE	Published Louisiana Supreme Court opinion; binding Louisiana precedent on the certified question.
PARTIES	Aizenhawar (Aizen) J. Marrogi v. Ray Howard, Ray Howard & Associates, Inc.

TOPICS

professional negligence

contracts

torts

appellate procedure

personal jurisdiction

PRACTICE AREAS

professional negligence

contracts

torts

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether Louisiana's witness-immunity doctrine bars a claim by a client against a retained expert for negligent performance of agreed litigation-support services, including formulation of opinions and recommendations and preparation for or presentation of testimony.
2. Whether the certified question presented an impermissible advisory or contingent opinion because of a dispute concerning federal personal jurisdiction.

HOLDINGS

1. The certified question presented a justiciable controversy and was not impermissibly advisory or contingent. The Louisiana Supreme Court would not revisit the federal courts' determination that personal jurisdiction existed because the Fifth Circuit had noted that Howard had not appealed or cross-appealed that ruling.
2. Louisiana's witness-immunity doctrine does not bar a claim by a party against a retained expert whom the party hired when the claim alleges negligent performance of agreed professional and contractual litigation-support services, including the formulation of opinions and recommendations and preparation for or presentation of testimony.
3. A retained expert may not be held liable merely because another expert or authoritative source disagrees with the expert's opinion; liability may arise from negligent performance of professional services underlying the opinion.

KEY QUOTATIONS

“After reviewing the cases from the courts of our sister states, as well as the applicable policy considerations, we hold that claims in connection with a retained expert's alleged failure to provide competent litigation support services are not barred by the doctrine of witness immunity.” (805 So. 2d at 1131-32)

“We therefore answer the question certified in the negative: Witness immunity or privilege in Louisiana does not bar a claim against a retained expert witness asserted by a party who in prior litigation retained the expert, which claim arises from the expert's allegedly negligent performance of his agreed upon duties to provide litigation support services.” (805 So. 2d at 1133)

FACTUAL BACKGROUND

Marrogi hired Howard, a medical-billing and coding expert, to review pathology reports, prepare litigation materials, and testify in Marrogi's action against Tulane. Howard produced an affidavit claiming that Tulane had underbilled Marrogi by approximately \$273,485, but the affidavit contained mathematical, pricing, and coding

errors. Howard's revised opinion also contained errors, and he then abandoned the remaining litigation-support work. Tulane relied on Howard's deposition testimony in obtaining summary judgment against Marrogi.

PROCEDURAL HISTORY

Marrogi retained Howard to provide medical-billing analysis and litigation support in Marrogi's suit against Tulane. After Howard submitted opinions containing mathematical, pricing, and coding errors and discontinued his services, the Louisiana trial court dismissed Marrogi's underlying action against Tulane on summary judgment. Marrogi then sued Howard in the United States District Court for the Eastern District of Louisiana; that court dismissed the claims under Rule 12(b)(6) based on witness immunity. The Fifth Circuit certified the witness-immunity question to the Louisiana Supreme Court.

DISPOSITION

other

REMAND INSTRUCTIONS

The certified answer was to be transmitted under seal to the United States Court of Appeals for the Fifth Circuit and to the parties. The Fifth Circuit indicated that recognition of the exception would result in remand to the federal district court for further proceedings.

CASES CITED

- Marrogi v. Howard, 248 F.3d 382, 386 (5th Cir. 2001)
- Marrogi v. Howard, 01-1106 (La. 6/13/01), 794 So. 2d 778
- Marrogi v. Gerber, 00-1091 (La. App. 4 Cir. 5/16/01), 787 So. 2d 1098, writ denied, 01-1768 (La. 9/28/01), 798 So. 2d 120
- Abbott v. Parker, 259 La. 279, 249 So. 2d 908 (1971)
- Oakes v. Walther, 179 La. 365, 154 So. 26 (1934)
- Burke v. Ryan, 36 La. Ann. 951 (1884)
- Terry v. Fellows, 21 La. Ann. 375 (1869)
- Knapper v. Connick, 96-0434, p. 3 (La. 10/15/96), 681 So. 2d 944, 946
- Lauga v. McDougall, 463 So. 2d 754 (La. App. 4th Cir. 1985)
- Briscoe v. LaHue, 460 U.S. 325 (1983)
- Murphy v. A.A. Mathews, 841 S.W.2d 671 (Mo. Sup. Ct. 1992)
- Moity v. Busch, 368 So. 2d 1134 (La. App. 3d Cir. 1979)
- Goldstein v. Serio, 496 So. 2d 412 (La. App. 4th Cir. 1986), writs denied, 501 So. 2d 208, 209 (La. 1987)
- S.T.J. v. P.M., 556 So. 2d 244 (La. App. 2d Cir. 1990)
- Myers v. Morris, 810 F.2d 1437 (8th Cir. 1987)
- Rogers v. Janzen, 711 F. Supp. 306 (E.D. La. 1989)
- Genovese v. Usner, 602 So. 2d 1084 (La. App. 1st Cir. 1992)

- Lescale v. Joseph Schwartz Co., Ltd., 116 La. 293, 40 So. 708 (1905)
- LLMD of Michigan, Inc. v. Jackson-Cross Co., 559 Pa. 297, 740 A.2d 186 (1999)
- Bruce v. Byrne-Stevens & Associates Engineers, Inc., 113 Wash. 2d 123, 776 P.2d 666 (1989)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/louisiana-supreme-court-of-louisiana/2002/marrog-v-howard-5h6r7k80>