

SUPREME COURT OF OHIO

Natl. Union Fire Ins. Co. of Pittsburgh, PA v. Wuerth

122 Ohio St. 3d 594, 2009-Ohio-3601 (Ohio 2009) · No. 2008-1334 · Decided July 29, 2009

SUMMARY

The Supreme Court of Ohio answered a certified question from the United States Court of Appeals for the Sixth Circuit concerning whether a legal malpractice claim may be maintained directly against a law firm when no individual attorney is liable or named as a defendant. The court held that a law firm cannot directly commit legal malpractice because it does not practice law, and that vicarious liability requires liability by at least one principal or associate. The court therefore answered the certified question in the negative.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	O'Donnell, J.; Moyer, C.J.; DeGenaro, J.; O'Connor, J.; Cupp, J.; Pfeifer, J.; Lanzinger, J.; Mary DeGenaro, J., sitting for Lundberg Stratton, J.
JURISDICTION	Ohio
DECIDED	July 29, 2009
DOCKET	2008-1334
DISPOSITION	other
PROCEDURAL POSTURE	The United States Court of Appeals for the Sixth Circuit certified a question of Ohio law concerning whether a legal-malpractice claim may be maintained directly against a law firm when no individual principal or employee is liable or remains a defendant.
STANDARD OF REVIEW	The court resolved a certified question of state law de novo.
PRECEDENTIAL VALUE	Published, precedential Supreme Court of Ohio decision
PARTIES	National Union Fire Insurance Company of Pittsburgh, PA v. Richard Wuerth, Lane, Alton & Horst, L.L.C.

TOPICS

[professional negligence](#)[vicarious liability](#)[appellate procedure](#)[appellate jurisdiction](#)

PRACTICE AREAS

professional liability

legal malpractice

appellate procedure

QUESTIONS PRESENTED

1. Whether a law firm, as an entity, may be directly liable for legal malpractice under Ohio law.
2. Whether a law firm may be vicariously liable for legal malpractice when none of its principals or employees is liable for malpractice or remains a defendant.

HOLDINGS

1. A law firm does not engage in the practice of law and therefore cannot directly commit legal malpractice.
2. A law firm may be vicariously liable for legal malpractice only when one or more of its principals or associates is liable for legal malpractice.

KEY QUOTATIONS

“A law firm does not engage in the practice of law and therefore cannot directly commit legal malpractice.”
(122 Ohio St. 3d at 594)

“A law firm may be vicariously liable for legal malpractice only when one or more of its principals or associates are liable for legal malpractice.” (122 Ohio St. 3d at 594)

“If there is no liability assigned to the agent, it logically follows that there can be no liability imposed upon the principal for the agent’s actions.” (122 Ohio St. 3d at 600)

FACTUAL BACKGROUND

National Union insured McLarens Toplis North America and Larry Wood in litigation arising from alleged negligent adjustment of hurricane damage claims. National Union retained Lane, Alton & Horst to defend the insureds, and the firm assigned the matter to partner Richard Wuerth and associate Beth Lashuk. During trial, Wuerth became incapacitated; other attorneys from the firm continued the defense, and the jury returned a \$16.2 million verdict against the insureds, followed by an \$8.25 million high-low settlement. National Union later sued Wuerth and the firm for legal malpractice, but Wuerth was dismissed as time-barred.

PROCEDURAL HISTORY

National Union sued Richard Wuerth and Lane, Alton & Horst, L.L.C., in the United States District Court for the Southern District of Ohio, alleging legal malpractice, vicarious liability, and direct malpractice liability. The district court dismissed Wuerth under Ohio's one-year statute of limitations and entered summary judgment for the law firm because no cognizable claim remained against Wuerth and the firm could not be directly liable for legal malpractice. On appeal, the Sixth Circuit certified the unsettled state-law question to the Supreme Court of Ohio, which answered it in the negative.

DISPOSITION

other

CASES CITED

- Richardson v. Doe, 176 Ohio St. 370, 199 N.E.2d 878 (1964)
- Zimmie v. Calfee, Halter & Griswold, 43 Ohio St. 3d 54, 538 N.E.2d 398 (1989)
- Browning v. Burt, 66 Ohio St. 3d 544, 613 N.E.2d 993 (1993)
- Lombard v. Good Samaritan Med. Ctr., 69 Ohio St. 2d 471, 433 N.E.2d 162 (1982)
- Youngstown Park & Falls St. Ry. Co. v. Kessler, 84 Ohio St. 74, 95 N.E. 509 (1911)
- Propst v. Health Maintenance Plan, Inc., 64 Ohio App. 3d 812, 582 N.E.2d 1142 (1990)
- Strock v. Pressnell, 38 Ohio St. 3d 207, 527 N.E.2d 1235 (1988)
- Thompson v. Community Mental Health Ctrs. of Warren, 71 Ohio St. 3d 194, 642 N.E.2d 1102 (1994)
- Investors REIT One v. Jacobs, 46 Ohio St. 3d 176, 546 N.E.2d 206 (1989)
- Clark v. Southview Hosp. & Family Health Ctr., 68 Ohio St. 3d 435, 628 N.E.2d 46 (1994)
- Councell v. Douglas, 163 Ohio St. 292, 126 N.E.2d 597 (1955)
- Albain v. Flower Hosp., 50 Ohio St. 3d 251, 553 N.E.2d 1038 (1990)
- Hanson v. Kynast, 24 Ohio St. 3d 171, 494 N.E.2d 1091 (1986)
- Losito v. Kruse, 136 Ohio St. 183, 24 N.E.2d 705 (1940)
- Maple v. Cincinnati, Hamilton & Dayton R.R. Co., 40 Ohio St. 313 (1883)
- State ex rel. Flagg v. Bedford, 7 Ohio St. 2d 45, 218 N.E.2d 601 (1966)
- Herron v. Youngstown, 136 Ohio St. 190, 24 N.E.2d 708 (1940)
- Bello v. Cleveland, 106 Ohio St. 94, 138 N.E. 526 (1922)
- Brown v. Louisburg, 126 N.C. 701, 36 S.E. 166 (1900)
- Munson v. United States, 380 F.2d 976, 979 (6th Cir. 1967)
- Pressnell v. Johnston, 38 Ohio St. 3d 207, 527 N.E.2d 1235 (1988)
- Natl. Union Fire Ins. Co. of Pittsburgh, PA v. Wuerth, 119 Ohio St. 3d 1442, 2008-Ohio-4487, 893 N.E.2d 514
- Biddle v. Warren Gen. Hosp., 86 Ohio St. 3d 395, 715 N.E.2d 518 (1999)
- Blackwell v. Gorman, 142 Ohio Misc. 2d 50, 2007-Ohio-3504, 870 N.E.2d 1238
- Rosenberg v. Atkins, Hamilton App. No. C-930259, 1994 WL 536568
- N. Shore Auto Sales, Inc. v. Weston, Hurd, Fallon, Paisley & Howley, L.L.P., Cuyahoga App. No. 86332, 2006-Ohio-456
- Baker v. LeBoeuf, Lamb, Leiby & MacRae, S.D. Ohio No. C-1-92-718, 1993 WL 662352

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