SUPREME COURT OF ARIZONA

Paradigm Insurance Company v. The Langerman Law Offices, P.A., 200 Ariz. 146

24 P.3d 593 (2001) · No. CV-99-0412-PR · Decided June 13, 2001

SUMMARY

The Arizona Supreme Court considers whether an attorney assigned by an insurer to defend an insured may owe the insurer a duty of care, including when the attorney-client relationship is not expressly established. The court holds that an insurer may be owed a duty as a nonclient when the insurer's interests do not conflict with those of the insured and the applicable factors support such a duty. The court also rejects the requirement that malpractice toward the insured must be alleged before a nonclient may pursue a claim against the attorney.

CASE DETAILS

COURT	Supreme Court of Arizona
WRITING FOR THE COURT	Feldman, Justice; Thomas A. Zlaket, Chief Justice; Charles E. Jones, Vice Chief Justice; Frederick J. Martone, Justice; Ruth V. McGregor, Justice; Michael D. Ryan, Justice; Rebecca White Berch, Justice
JURISDICTION	Arizona
DECIDED	June 13, 2001
DOCKET	CV-99-0412-PR
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Paradigm appealed after the trial court granted summary judgment to Langerman on Paradigm's negligence counterclaim. The Arizona Supreme Court reviewed the court of appeals' partial reversal and the trial court's summary judgment ruling.
STANDARD OF REVIEW	Summary judgment is reviewed based on the facts viewed in the light most favorable to the nonmoving party; the court determines whether there is no genuine dispute of material fact and whether the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	published precedential opinion; en banc decision of the Supreme Court of Arizona
PARTIES	Paradigm Insurance Company v. The Langerman Law Offices, P.A.

TOPICS

insurance · professional negligence · duty of care · negligence

PRACTICE AREAS

insurance · professional negligence · legal malpractice · civil procedure

QUESTIONS PRESENTED

1. Whether an express agreement is required to form an attorney-client relationship between an insurer and counsel assigned to defend the insurer's insured.
2. Whether an attorney assigned by an insurer to defend an insured may owe the insurer a duty of care even if the insurer is not an attorney-client of the lawyer.
3. Whether the potential for a conflict of interest between insurer and insured automatically prevents dual representation or precludes a duty to the insurer.
4. Whether summary judgment for Langerman was proper when the record did not establish as a matter of law that Langerman owed no duty to Paradigm.

HOLDINGS

1. An express oral or written agreement is not a prerequisite to formation of an attorney-client relationship; the relationship may arise from the parties' manifested intent or objectively reasonable reliance on the lawyer's representation.
2. An attorney assigned by an insurer to represent its insured may owe the insurer a duty of care, even when the insurer is not the attorney's client, when the lawyer's services are intended to benefit the insurer, the duty would not significantly impair obligations to the insured, and absence of the duty would make enforcement of those obligations unlikely.
3. The mere potential for a future conflict between insurer and insured does not automatically prevent assigned counsel from representing both or eliminate a duty to the insurer; actual conflicts or substantial risks of conflict require the lawyer to prioritize the insured's interests and comply with applicable conflict rules.
4. Summary judgment for Langerman was improper because Paradigm could pursue a negligence claim based on a duty owed by assigned counsel to the insurer, regardless of whether Paradigm was an attorney-client.

KEY QUOTATIONS

> *"We also determine that, based on a long line of precedent, when an insurer assigns an attorney to represent an insured, the lawyer has a duty to the insurer arising from the understanding that the lawyer's services are ordinarily intended to benefit both insurer and insured when their interests coincide."* (602)

> *"This duty exists even if the insurer is a nonclient."* (602)

> *“We hold again today that a lawyer has a duty, and therefore may be liable for negligent breach, to a nonclient under the conditions set forth in previous case law and the RESTATEMENT.”* (602)

FACTUAL BACKGROUND

Paradigm insured Dr. Benjamin A. Vanderwerf for medical-malpractice liability and assigned Langerman to defend him in Renee Taylor's malpractice action. Langerman allegedly failed to investigate whether Vanderwerf was covered by Samaritan's liability insurance and therefore failed to advise Paradigm about tendering the defense to Samaritan Insurance Funding, which potentially provided primary coverage. After new counsel discovered the coverage, the tender was rejected as untimely, and Paradigm settled Taylor's claim within its own policy limits without contribution or indemnification from Samaritan Insurance Funding. Paradigm alleged that Langerman's negligence caused only Paradigm economic damage.

PROCEDURAL HISTORY

Paradigm assigned Langerman to defend an insured physician in a medical-malpractice action. After Langerman allegedly failed to investigate or timely tender potentially primary coverage held by another insurer, Paradigm settled the underlying claim with its own funds and counterclaimed for damages when Langerman sued for legal fees. The trial court granted Langerman summary judgment, reasoning that no attorney-client relationship or duty existed between Langerman and Paradigm. The court of appeals reversed in part, and the Arizona Supreme Court vacated that opinion in part, reversed the trial court in part, and remanded.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

The trial court must determine on remand whether Langerman breached its duty to Paradigm and caused damage, including whether the applicable standard of conduct required investigation of other primary coverage or a timely tender of the defense.

CASES CITED

- Martinez v. Woodmar IV Condominiums Homeowners Ass'n, 189 Ariz. 206, 941 P.2d 218 (1997)
- Paradigm Ins. Co. v. Langerman Law Offices, 196 Ariz. 573, 2 P.3d 663 (App. 1999)
- In re Pappas, 159 Ariz. 516, 768 P.2d 1161 (1988)
- In re Neville, 147 Ariz. 106, 708 P.2d 1297 (1985)
- Barmat v. John & Jane Doe Partners, 155 Ariz. 515, 747 P.2d 1214 (App. 1986)
- Parsons v. Continental Am. Group, 113 Ariz. 223, 550 P.2d 94 (1976)
- Zilisch v. State Farm Mut. Auto. Ins. Co., 196 Ariz. 234, 995 P.2d 276 (2000)
- Atlanta Int'l Ins. Co. v. Bell, 438 Mich. 512, 475 N.W.2d 294 (1991)
- In re Rules of Professional Conduct, 299 Mont. 321, 2 P.3d 806 (2000)
- Farmers Ins. Co. v. Vagnozzi, 138 Ariz. 443, 675 P.2d 703 (1983)

- Fickett v. Superior Court, 27 Ariz. App. 793, 558 P.2d 988 (1976)
- Franko v. Mitchell, 158 Ariz. 391, 762 P.2d 1345 (App. 1988)
- Donnelly Construction Co. v. Oberg/Hunt/Gilleland, 139 Ariz. 184, 677 P.2d 1292 (1984)
- Chalpin v. Brennan, 114 Ariz. 124, 559 P.2d 680 (App. 1976)
- Napier v. Bertram, 191 Ariz. 238, 954 P.2d 1389 (1998)
- Lombardo v. Albu, 199 Ariz. 97, 14 P.3d 288 (2000)
- Hamman v. County of Maricopa, 161 Ariz. 58, 775 P.2d 1122 (1989)
- Mur-Ray Mgmt. Corp. v. Founders Title Co., 169 Ariz. 417, 819 P.2d 1003 (App. 1991)
- Kotterman v. Killian, 193 Ariz. 273, 972 P.2d 606 (1999)