

Minnesota Supreme Court Rules in Favor of Dorsey Firm in McIntosh County Bank v. Dorsey & Whitney, LLP, 745 N.W.2d 538 (March 6, 2008)

8th Circuit Case To Be Heard on April 17th

The Minnesota Supreme Court has issued its widely anticipated decision in McIntosh County Bank. The Minnesota Supreme Court reversed the Minnesota Court of Appeals' decision that allowed 31 banks to maintain a legal malpractice action against the Dorsey law firm under third-party beneficiary and implied contract theories. The Supreme Court held that the banks were not "direct and intended" third-party beneficiaries of the legal services and did not have an "implied contract for legal services" with the law firm

The banks were participants in loans originated by Miller & Schroeder Financial, Inc., who had hired Dorsey to draft the loan documentation. The trial court dismissed the legal malpractice and related negligent misrepresentation claims against Dorsey. The court of appeals reversed the dismissal despite finding that the banks had no reasonable or justifiable basis to rely on the law firm's advice. The supreme court granted review a year ago.

In its March 6, 2008 opinion, the Supreme Court stated that it was reaffirming the rule from Marker v. Greenberg, 313 N.W.2d 4 (Minn. 1981) that a third-party must be a

direct and intended beneficiary of an attorney's services to maintain a legal malpractice action on third-party beneficiary theories. In footnotes to the opinion, the court noted that its Marker decision and the decision in Admiral Merchants Motor Freight, Inc. v. O'Connor & Hannan, 494 N.W.2d 261 (Minn. 1992) had been inconsistently interpreted by the lower courts and also noted that its own conclusion in Marker had been incorrectly stated. The court stated that the confusion about the Marker decision made it "prudent at this time to elaborate further on the meaning of 'a direct and intended beneficiary.'" "

Under Minnesota law, to be a "direct" beneficiary, a third-party must demonstrate that the transaction's "central purpose" is an effect on the third-party and the effect "is intended as a purpose of the transaction" giving rise to the legal services. To be the "intended" beneficiary, the attorney must aware of his or her client's intention to benefit the third-party. Only if the third-party is both a "direct and intended" beneficiary will it have standing to pursue a legal malpractice claim as a third-party beneficiary. The Supreme Court held that the 31 banks were not direct and intended beneficiaries

and affirmed the trial court's grant of summary judgment for the Dorsey firm.

The McIntosh Bank decision demonstrates that Minnesota law requires courts to narrowly define the universe of parties that may pursue legal malpractice claims. A related case involving another bank from the same transaction, Bremer Bus. Fin. Corp. v. Dorsey & Whitney, LLP, 364 B.R. 1 (D. Minn. 2007), is scheduled for oral argument before the Eighth Circuit Court of Appeals on April 17, 2008. In Bremer, after a trial in the bankruptcy court, Judge Donovan Frank affirmed the central ruling of a Report and Recommendation by the bankruptcy judge that Bremer was entitled to proceed and recover on a legal malpractice claim. The parties have advised the Eighth Circuit of the McIntosh Bank decision.

Kay Hunt of Lommen Abdo represented the Minnesota State Bar Association and the Minnesota Defense Lawyer Association as Amicus Curiae before the Minnesota Supreme Court.

Lommen Abdo President Phillip A. Cole is once again listed among the best lawyers in the nation in the area of legal malpractice by The Best Lawyers in America. Phil heads Lommen Abdo's legal malpractice litigation team which includes Barry O'Neil, Keith Broady, Diane Odeen, Valerie Sims, Kay Nord Hunt, Margie Bodas, Ehrich Koch, Brett Clark and Bryan Feldhaus. Best Lawyers in America is the oldest lawyer-rating publication in the U.S., and is widely recognized as the gold standard for accuracy and integrity. Corporate Counsel Magazine calls it, "The most widely respected, thorough, reliable and valuable resource for all who seek the best in the legal profession." The group was profiled in the April 2008 edition of The American Lawyer.



Phillip A. Cole, a Best Lawyer in Legal Malpractice (second from left) and team members (left to right) Diane M. Odeen, Valerie R. Sims, Keith J. Broady, Kay Nord Hunt and Barry A. O'Neil.

This legal malpractice alert is prepared by Lommen, Abdo, Cole, King & Stageberg, P.A. to offer information on recent legal developments to those interested in legal malpractice issues. This brief e-newsletter is not intended to provide legal advice for a specific situation or to create an attorney-client relationship. We would be pleased to provide legal assistance to you on this and other subjects if you contact Barry O'Neil or another member of the firm's Professional Liability Practice Group. If you wish to be REMOVED from the list of people who receive a complimentary copy of our newsletter on legal malpractice issues, please reply to this email, with the word REMOVE in the subject line. If you know of others that may be interested in this information, please feel free to forward this e-newsletter on to them. Anyone who would like to be added to the distribution list should contact Barry O'Neil and provide their name, company and email address. We respect your privacy and will not share your email address.