

# Legal Malpractice Trends

A Lommen Abdo Publication

July 2009

The Minnesota Court of Appeals recently issued two cases which reiterate that a plaintiff must offer evidence in support of each of the elements of a legal malpractice claim in order to survive summary judgment.

**[Laurie & Laurie, P.A. v. BondPro Corp.](#), 2009 WL 1374889 (Minn. App. May 19, 2009).**

The firm of Laurie & Laurie, P.A. ("Laurie") represented BondPro Corporation ("BondPro") in trade secret litigation in federal court in Wisconsin. The trial was bifurcated, and the jury found for BondPro on liability against Siemens Power Generation, Inc. ("Siemens"). The trial court, however, granted Siemens' motion for a directed verdict, holding that BondPro had not introduced evidence to show that its alleged trade secret was not generally known or readily ascertainable. BondPro fired Laurie and hired another firm for an appeal, but the Seventh Circuit affirmed, finding that the process was already generally known. In addition, the Seventh Circuit found that BondPro had presented no evidence that the purported trade secret had any value, and that therefore damages could not have been awarded.

Following the appeal, Laurie sued BondPro for recovery of attorney fees, and BondPro brought a counterclaim for legal malpractice, alleging that the Laurie firm was negligent in failing to obtain an expert to testify in support of the trade secret. But BondPro essentially repeated Laurie's alleged mistake - it failed to introduce any evidence of the value of the trade secret. The trial court, and the Minnesota Court of Appeals, held that the failure of BondPro to introduce expert evidence on the value of the trade secret was fatal to its legal malpractice claim.

**[Russell v. Roberts](#), 2009 WL 1311863 (Minn.App. May 12, 2009).**

Kimberly Russell hired attorney George Roberts to advise her regarding bankruptcy. Russell was the beneficiary of a structured settlement from a personal injury lawsuit, and Roberts erroneously told her that the annuity would survive the bankruptcy. He was wrong. The bankruptcy trustee sued Russell to recover the annuity to pay creditors, and she settled with the trustee by agreeing to retain only 20% of the remaining annuity payments.

Russell sued Roberts for his erroneous advice. The trial court, however, granted Roberts' motion for summary judgment because Russell produced no evidence that she was harmed by filing for bankruptcy. In fact, the trial court noted, the bankruptcy discharged more debt than Russell lost from the annuity payments. Nor did Russell introduce any evidence which could have supported a conclusion that there were other options which would have left her in better financial condition. Her claims therefore failed both the "but-for" and damages elements of a legal malpractice claim. Although Russell brought a fraudulent misrepresentation claim as well, the Court of Appeals held that it could not survive for the same reasons - there was insufficient evidence that the alleged misrepresentation proximately caused any damage.

(Lommen Abdo successfully represented attorney Roberts on the appeal.)

As the [BondPro](#) and [Russell](#) cases note, a legal malpractice plaintiff's claim remains most vulnerable on the issue of causation and damages. If there is scant evidence about how the plaintiff would have fared absent the alleged malpractice, defense counsel should not be shy about moving for summary judgment or a directed verdict.

## PRACTICE POINTERS

The Minnesota Court of Appeals issued two cases on June 30 that emphasize an attorney's duty of honesty and importance of due process when requesting sanctions.

In [Chapman v. Minnesota Lawyers Mutual Ins. Co.](#), 2009 WL 1851901 (Minn.App. June 30, 2009), the Minnesota Court of Appeals affirmed the trial court's denial of malpractice insurance coverage based on the attorney's failure to disclose the existence of a known claim on the policy application. What was

unusual about this case is the fact that it was brought by the attorney's former client, who had settled with the attorney and had been assigned the claim against the insurer under a Miller-Shugart arrangement. See Miller v. Shugart, 316 N.W.2d 729 (Minn. 1982). In essence, the former client was unable to convince the court that his own inquiries about a claim against the insurer for having missed a statute of limitations did not put the attorney on notice that a malpractice claim was likely.

Mahoney & Emerson v. Private Bank of Minn., 2009 WL 1852789 (Minn.App. June 30, 2009), is the latest appellate installment of a long-standing legal war between former law partners Michael Mahoney and Steven Hagberg. Mahoney sued Private Bank on behalf of the former law firm for conversion of funds, which brought a third-party action against Hagberg, who brought a fourth-party action against Mahoney seeking indemnification as an officer of the firm. Hagberg won an affirmative summary judgment from the trial court, which also awarded attorneys' fees as a sanction against Mahoney. The Court of Appeals was not persuaded and reversed. In particular, the appellate court noted that Mahoney was not allowed sufficient due process before being sanctioned - the motion for sanctions had been filed by Hagberg after the related claims against Private Bank had been resolved and the disputed conduct could not be amended, the motion did not comply with the statutory requirements, and trial court had never issued a motion to show cause before awarding sanctions. As for the indemnification claim, the Court of Appeals held that Hagberg could not prevail under the partnership bylaws because he never tendered the defense, and found there to be unresolved issues of material fact precluding summary judgment on indemnification as a corporate officer under Minn. Stat. § 302A.011.

While the details of this case are complex, the opinion stands for the principle that sanctions may not be awarded on any ground without sufficient due process.



This legal malpractice update was written by [Diane Odeen](#). Visit our web site to learn more about Diane and Lommen Abdo's other [professional liability attorneys](#).

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*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 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.*



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