

PROFESSIONAL LIABILITY UPDATE

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LEGAL MALPRACTICE

Federal Law

By Jennifer A. Becker and Jessica Rudin

The U.S. District Court of Appeals for the 9th Circuit holds that when a legal malpractice claim requires a court to interpret a Collective Bargaining Agreement it is preempted by §301 of the Labor Management Relations Act

Dahl v. Rosenfeld (9th Cir. 2003) 316 F.3d 1074

Dahl hired Rosenfeld to represent him in a Union grievance. Rosenfeld was specifically charged with attempting to protect Dahl's rights under a Collective Bargaining Agreement (CBA). Dahl sued Rosenfeld in state court for legal malpractice alleging that because Rosenfeld's representation fell below the standard of care the Union took no action to remedy his employer's breach of the labor contract.

After removing the state court action to federal district court Rosenfeld alleged the legal malpractice action was preempted pursuant to §301 of the Labor Management Relations Act (LMRA). Under this statute, a state law claim is completely preempted by the LMRA when it requires a court to interpret a provision of a CBA. At the district court, Dahl successfully challenged the removal and obtained attorney's fees.

The U.S. District Court of Appeal reversed agreeing with Rosenfeld that the resolution of Dahl's legal

malpractice action turned on interpretation of CBA and therefore preempted by §301 of the LMRA.

The order remanding the action to state court was not reviewable on appeal under Title 28 U.S.C. §1447(d). However, the Court was empowered to review Dahl's award of attorney's fees. It concluded that the award was based on an erroneous determination that Dahl's legal malpractice action was not preempted and vacated the award.