

PROFESSIONAL LIABILITY UPDATE

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LEGAL MALPRACTICE

California Law

By Jennifer A. Becker

The Second District holds that an attorney owes no duty to an employer who was dismissed from a worker's compensation action after its insurer accepted responsibility for the worker's claim.

Canton Poultry and Deli, Inc. v. Stockwell, Harris, Widom & Wolverton (2003) 109 Cal. App. 4th 1219

Daniel Ysabal, Mark Huang, and their law firm Stockwell, Harris, Widom & Wolverton ("Stockwell") were retained by California Indemnity Insurance Company to defend a claim filed by Andrew Duran against his employer Canton Poultry & Deli, Inc. After Stockwell was retained, California Indemnity accepted responsibility for Duran's claim and Canton Poultry was dismissed from the Worker's Compensation case. Thereafter, through his counsel, Duran indicated to Stockwell that he was in the process of filing a civil suit and that he wanted to settle both the civil suit and the Worker's Compensation action together. Stockwell responded that the personal injury action was not their concern. Stockwell did not inform Canton Poultry that it was negotiating to settle the Worker's Compensation case nor did they advise it that Duran was interested in a global settlement. Later Canton Poultry separately negotiated a settlement with Duran.

Canton Poultry sued Stockwell alleging that it had breached its duty by not informing Canton Poultry of the potential to settle the civil and the Worker's Compensation actions together. Canton Poultry alleged that their payment to settle the civil suit was higher than it would have been in connection with a global settlement, and that their expenditure for attorneys' fees and costs as well as employee time in dealing with the civil suit was increased due to Stockwell's actions.

The trial court sustained Stockwell's demurrer to the complaint. The Court of Appeal affirmed, agreeing that at the point in time Duran informed Stockwell of its desire to settle the civil suit, Stockwell owed no duty to Canton Poultry as a matter of law.

The court agreed with Stockwell's argument that Labor Code § 3755, which operated to dismiss Canton Poultry from the Worker's Compensation case once its insurer assumed liability cut off any

duties Stockwell owed to Canton Poultry. Under Labor Code § 3755 once an insurer accepts responsibility for a Worker's Compensation claim, the employer is relieved of liability and the insurer is substituted in the Workers' Compensation proceeding in place of the employer. The proceeding continues against the insurer instead of the employer. Although § 3755 does not expressly address the duties and rights of attorneys, the court found that because the employer is dismissed from the Worker's Compensation action the attorney has no duty is to the employer.

An employer's belief that an attorney client relationship exists has to be governed by a rule of reason. Once the employer has been dismissed from the Worker's Compensation action the employer has no reasonable basis to believe that it is still in an attorney client relationship unless developments in the Worker's Compensation case require the attorney to protect or defend the interest of the employer. There were no allegations in the complaint that Stockwell intended to act as Canton Poultry's attorney, that it sought legal advice from Stockwell or that Stockwell offered legal advice. There were no allegations that Stockwell even communicated with plaintiffs. The court would not infer that the attorney's conduct may have misled Canton Poultry into believing it was represented. Thus Duran's attempts to negotiate his civil case against Canton Poultry through contact with the Worker's Compensation attorneys were misdirected; the Court of Appeal agreed with Stockwell that Duran's civil case was not its concern.

The court found that Duran's civil suit did not create a conflict of interest between Canton Poultry and its insurer giving rise to a right to independent counsel. Canton Poultry had no liability in the Worker's Compensation case and therefore there could be no conflict of interest with its insurer.

Comment: This case stresses the importance of counsel making clear the parameters of the attorney client relationship. Courts will relieve attorneys of liability to former clients when it is clear the attorney client relationship has ended either by operation of law or by the expressions of the parties.