

## PROFESSIONAL LIABILITY UPDATE

### CAUSATION

By Shane M. Cahill

#### ***Namikas v. Miller* (2014) 225 Cal.App.4<sup>th</sup> 1574**

*The Second District holds the causation element of a legal malpractice action requires a plaintiff to establish there would have been a more favorable outcome in the underlying action “but for” the lawyer’s alleged negligence.*

Paul Miller represented Alexander Namikas in his divorce. The couple’s settlement included a permanent monthly spousal-support payment, calculated using a software program widely used by courts to set child and spousal support.

Namikas sued Miller, claiming Namikas had to pay excessive spousal support because Miller failed to obtain a proper expert analysis. Miller moved for summary judgment arguing there was no proof Namikas’s ex-wife would have agreed to less than the stipulated monthly payment. Miller submitted a declaration from the underlying opposing counsel that his client would not have accepted less than the agreed amount. Namikas countered with expert testimony to the effect the software program set a higher spousal support payment than would have resulted from a trial. The trial court granted the motion finding there was no proof the ex-wife would have agreed to a lower amount of support.

The Second District agreed there was no evidence Namikas’s ex-wife would have accepted lower support payments. Even if a trial would have garnered a lower support payment, Namikas failed to establish the overall

result would have been more favorable. Less spousal support may have led to a less advantageous property division or attorney’s fee obligation.

Namikas also failed to prove an expert analysis would have inevitably led to a lower support payment. Namikas did not show the trial court could have reached only one decision lowering support, or there would have been a better outcome considering the added cost of trial and Namikas’s potential liability for his ex-wife’s attorney’s fees.

*Comment:* Proof of causation requires plaintiff to recreate an entire underlying action to demonstrate a substantially more favorable result for the entire case, not just a portion, absent the attorney’s alleged negligence.

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