



## Alerts

### Law Firm Exonerated Because an Unforeseen Change in a Party's Testimony was the Superseding Cause of the Claimed Malpractice Injury

June 6, 2023

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*GMG Ins. Agency v. Edelstein*, 2023 Del. Super. LEXIS 178; 2023 WL 2854760 (Superior Court of Delaware, February 13, 2023)

#### Brief Summary

A defendant law firm was sued for legal malpractice after failing to obtain summary adjudication of a tortious interference claim against the former client and one of its brokers. The client later had to settle the case when the broker recanted his prior favorable testimony and instead implicated the client in a conspiracy to interfere.

The court granted summary judgment for the law firm on the malpractice case, finding that the settlement was induced by the broker's recanted testimony—an unforeseeable superseding cause that broke the chain of causation between the law firm's alleged loss of the tortious interference summary judgment and the harm suffered.

#### Complete Summary

Plaintiff, GMG Insurance Agency (GMG), engaged the defendant Margolis Edelstein, a law firm, after GMG and one of its brokers, Howard Wilson, were sued by Wilson's former employer, Lyons Insurance Agency, for alleged violations of Wilson's non-competition covenant with Lyons, aiding and abetting breach of the covenant, unjust enrichment, civil conspiracy, and tortious interference with a contract.

On behalf of GMG and Wilson, Margolis moved for summary judgment against Lyons. The GMG summary judgment was successful as to all causes of action against GMG but the tortious interference claim. The court concluded that the "factual record was not developed enough to determine 'whether GMG's actions satis[fied] the...tortious interference requirements'" and allowed the claim to proceed.

At a subsequent mediation, Margolis recommended that GMG offer \$600,000 to settle the case. GMG refused and, shortly thereafter, terminated Margolis. Over a year later, GMG, represented by subsequent counsel, again rebuffed as

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"laughable" Lyons' second offer to settle the case for \$750,000.

Later, GMG also fired Wilson. Twenty months after GMG terminated Margolis, the disgruntled Wilson recanted his prior favorable testimony. He instead submitted an affidavit attesting that GMG had agreed to hire Wilson and then conspired with the latter and OTG, a Wilson client, to move OTG's business from Lyons to GMG. Faced with the incriminating affidavit, GMG finally agreed to settle with Lyons for \$1.2 million.

Following the settlement, GMG turned around and sued Margolis for malpractice, contending that but for Margolis' negligent handling of the underlying summary adjudication motion, Lyons' tortious interference claim would not have survived, and GMG would not have been vulnerable to the Wilson affidavit. GMG complained it was forced to settle because of Wilson's perjured testimony and the court's refusal to grant it a trial continuance to rebut the same.

Margolis moved for summary judgment. In granting the Margolis motion, the court found no evidence of incompetence by Margolis vis-à-vis the underlying summary judgment proceedings or any evidence that the settlement was caused by any Margolis error or omission. Rather, according to the court, the settlement would not have occurred when it did and in the agreed amount but for Wilson's affidavit, which Margolis could not have anticipated or reasonably foreseen. The Wilson affidavit thus operated as a superseding cause of the settlement, breaking the chain of causation between any conduct by Margolis and the injury complained of.

The court denied GMG's motion for re-argument, holding that there was no evidence that the court overlooked a controlling precedent or legal authority or misapprehended the law or facts applicable to the case in reaching its conclusions.

## Significance of the Decision

The case is instructive regarding the type of intervening act or event that will operate to break the causal connection between an attorney's alleged error and the resulting injury. As the court defined it, a superseding cause is a "later cause of independent origin that was not foreseeable." In order to break the causal connection, the intervening act or event must have been neither "anticipated nor reasonably foreseeable by the original tortfeasor." Even if the original tortfeasor bore some degree of negligence, the superseding act will absolve that tortfeasor from malpractice liability if evidence shows that the alleged conduct "did nothing more than furnish the condition or give rise to the occasion" upon which injury could be wrought.