

Malpractice

Causation Requirement Strengthened in Legal Malpractice Case



BY KEITH A. CALL

A defendant lawyer is entitled to judgment as a matter of law if a different, nonconflicted lawyer could have done the same things the conflicted lawyer did. So held the Utah Supreme Court in a recent landmark legal malpractice case, *USA Power, LLC v. PacifiCorp.*, 2016 BL 156399, 2016 UT 20 (Utah March 16, 2016).

The court also rejected a “timeline” theory of causation, by which the plaintiff urged liability based on the fact that the “harm” came after the attorney’s “wrongful conduct.” The court invoked traditional concepts of causation to affirm a trial court’s judgment notwithstanding a jury verdict against the lawyer.

This decision strengthens the “causation” legal defense for lawyers in an area courts have traditionally deemed “fact intensive.”

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Facts of Case

The defendant lawyer had represented USA Power to secure options on water rights for an anticipated new power plant in central Utah known as the “Spring Canyon project.”

By August 2002, USA Power had acquired options on sufficient water through the lawyer’s work, and began negotiating with PacifiCorp for the sale of the Spring Canyon project.

On March 14, 2003, PacifiCorp agreed to purchase the Spring Canyon project for \$3 million and also agreed to enter into a nonbinding joint development agreement. These agreements were not reduced to writing, and PacifiCorp reneged three days later.

On March 3, 2013, the lawyer had started representing PacifiCorp to acquire water rights for a competing power plant. PacifiCorp ultimately constructed the competing power plant, rendering the Spring Canyon project nonviable.

USA Power sued the lawyer and her law firm, alleging breach of fiduciary duty, including conflicts of interest and misuse of confidential information.

A jury rendered a \$3.2 million verdict against the lawyer and law firm, which the trial court set aside on the lawyer's motion for judgment n.o.v.

Supreme Court Analysis

The Utah Supreme Court affirmed the JNOV. The court cited traditional causation standards for legal malpractice cases: “[A] plaintiff, to prove the element of causation in a legal malpractice suit, must show that he or she would have been better off if the attorney’s alleged malpractice had never occurred.” 2016 UT 20, ¶ 116.

The court then elaborated by holding that, as a matter of law, a plaintiff cannot meet its burden to prove causation if another, nonconflicted lawyer could have done the same thing the conflicted lawyer was accused of doing wrong:

[I]f the third party or attorney provides evidence that the third party would have hired a different attorney in the stead of the breaching attorney, the client must accordingly show that the other attorney, with reasonable skill and dili-

gence, would not have been able to do for the third party what the breaching attorney did.

Id.

The court imposed a burden on USA Power to prove that PacifiCorp would either have not hired another lawyer or that a reasonably skilled attorney would not have been able to duplicate the defendant lawyer’s work. *See id.* at ¶ 118.

The court also held that the simple sequence of events was insufficient for a jury to infer causation, specifically rejecting USA Power’s timeline theory of causation. “Courts do not assum[e] a causal connection between two events merely because one follows the other.” *Id.* ¶ 136.

Notably, the court affirmed a \$115 million judgment against PacifiCorp based on misappropriation of trade secrets and confidential information.

This decision is a significant victory for lawyers and their defense counsel. Conflict of interest cases have been seen as difficult to defend, even if causation and damages are weak. This case provides a powerful shield for lawyers in appropriate cases.

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