

Florida Appellate Court Rules That Insurer Lacks Standing To Bring Malpractice Suit Against Law Firm Retained To Represent Insured

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A Florida Appellate court dismissed an insurer's malpractice suit against counsel it hired to represent the insured, finding that the insurer lacked standing to assert such claims. *Arch Ins. Co. v. Kubicki Draper, LLP*, 2019 WL 318466 (Fla. Ct. App. Jan. 23, 2019).

An insurer hired a law firm to defend its insured in an underlying action. After the suit settled for policy limits, the insurer sued the law firm for professional negligence, claiming that the law firm's delay in asserting a statute of limitations defense resulted in a larger settlement than should have been necessary. A Florida trial court granted the law firm's summary judgment motion, finding that the insurer lacked standing to sue the law firm and that there was no privity between the insurer and law firm. The trial court acknowledged that federal district courts in Florida have recognized an insurer's right to bring a malpractice claim against an attorney retained to represent its insured, but deemed those decisions non-binding, unpersuasive and distinguishable.

The appellate court affirmed. The court rejected the insurer's public policy argument that precluding an insurer from bringing a malpractice action could shield law firms from malpractice liability. The court stated: "[W]here nothing indicates that the law firm was in privity with the insurer, or that the insurer was an intended third-party beneficiary of the relationship between the law firm and the insured, we are unwilling to expand the field of privity exceptions to apply to this case."

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