The Professional Liability Law Blog

BRINGING PROFESSIONAL LIABILITY INFORMATION TO CALIFORNIA ATTORNEYS, INSURANCE PROFESSIONALS, ACCOUNTANTS AND STOCK BROKERS

Anti-SLAPP Statute Does Not Prevent Garden-Variety Legal Malpractice Claim from Going Forward

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A law firm was unsuccessful in a recent, creative effort to use the anti-SLAPP statute to block a legal malpractice claim from proceeding.

Code of Civil Procedure section 425.16, the anti-SLAPP statute, allows a court to strike a cause of action against a person arising from any act of that person in furtherance of the persons' right of petition or free speech under the United States Constitution or the California Constitution. The goal is to eliminate meritless or retaliatory litigation at an early stage of the proceedings. "SLAPP" stands for "strategic lawsuits against public participation." In ruling on an anti-SLAPP motion, the threshold issue is whether the challenged action arises from protected activity under the anti-SLAPP statute.

In *Clarke v. Beam, Brobeck, West, Borges & Rosa, LLP*, a law firm had been sued for malpractice in connection with its handling of prior litigation. The firm filed an anti-SLAPP motion hoping to dispose of the malpractice suit. The firm asserted that its actions in pursuing the suit on behalf of the client constituted protected activity.

In an unpublished decision dated October 7, 2010, the California Court of Appeal (Fourth Appellate District, Division Three) disagreed. The court held that a garden-variety legal malpractice claim focusing on an attorney's alleged incompetent handling of a prior lawsuit does not arise from protected activity engaged in by the attorney. The court found that the legal malpractice suit was not premised on any protected activity by the law firm, but on the "allegedly bad advice that defendants gave to plaintiffs."