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Insurer Cannot Sue Law Firm It Hired to Defend Its Insured for Legal Malpractice

BY: Bradley T. Guldalian

In *Arch Ins. Co. v. Kubicki Draper*, LLP., 44 Fla. L. Weekly D269a (Fla. 4th DCA Jan. 23, 2019), the insurer hired a law firm to defend its insured. During litigation, the law firm failed to file a defense which resulted in the insurer paying a large settlement. Once the underlying litigation ended, the insurer filed a legal malpractice action against the law firm alleging its negligence caused the insurer to pay a settlement it should never have had to pay. The law firm filed a Motion for Summary Judgment alleging the insurer lacked standing to sue the law firm because Florida law limited an attorney's liability for legal malpractice to clients with whom the attorney shares privity of contract and the insurer and the law firm were not in privity of contract with one another. The trial court granted the law firm's motion and, on appeal, the Fourth District Court of Appeal affirmed. In so holding, the court found nothing in the record to indicate the insurer was in privity of contract with the insured. Rather, all evidence revealed the attorney was only in privity of contract with the insured. Although the insurer alleged that it paid the law firm's fees, was an intended third-party beneficiary of the relationship between the attorney and the insured, and that privity of contract with the attorney was unnecessary, the court rejected that argument holding none of the recognized exceptions to the strict privity requirement in Florida applied.