

Florida Supreme Court Rules That Insurer Has Standing To Bring Malpractice Suit Against Counsel Retained To Represent Insured

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Answering a certified question, the Supreme Court of Florida ruled that an insurer has standing through a contractual subrogation provision to maintain a malpractice action against counsel hired to represent the insured where the insurer has a duty to defend. *Arch Ins. Co. v. Kubicki Draper, LLP*, 2021 WL 2232083 (Fla. June 3, 2021).

Arch Insurance Company hired counsel to defend its insured in an underlying action. After the suit settled for policy limits, Arch sued the law firm for professional negligence, claiming that the law firm's delay in asserting a statute of limitations defense resulted in an unnecessarily large settlement. A Florida trial court granted the law firm's summary judgment motion, finding that Arch lacked standing to sue and that there was no privity between Arch and the law firm. An appellate court affirmed, stating: "where 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." See [Feb. 2019 Alert](#).

This month, the Supreme Court quashed the appellate decision and ruled that Arch had standing by virtue of the policy's subrogation provision. The provision stated that Arch "shall be subrogated to all your rights of recovery therefor against any person, organization, or entity." The court held that this provision included claims for legal malpractice against counsel retained to defend the insured. In so ruling, the court rejected the law firm's argument that public policy prohibits assignment of legal malpractice claims. The court noted that while there is a public interest in preventing fraudulent claim assignments, that concern is not implicated here, where "the subrogated claim originates by contract from the insured to the insurer, the same entity who hired the lawyer in the first instance."

Because the court's ruling was based on the subrogation provision, it did not reach the issue of whether an insurer is a third-party beneficiary of the attorney-client relationship between the law firm and insured.

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