

Eighth Circuit Predicts That South Dakota Supreme Court Would Prohibit Assignment Of Legal Malpractice Claims Against Insurer-Appointed Counsel (Insurance Law Alert)

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Holding

The Eighth Circuit dismissed a malpractice suit brought by a tort victim against insurer-appointed counsel, ruling that the assignment of such claims was prohibited by South Dakota law. *Thompson v. Harrie*, 2023 U.S. App. LEXIS 2753 (8th Cir. Feb. 3, 2023).

Background

An automobile accident resulted in the death of Thompson. When his estate sued the other driver involved, the driver's automobile insurer appointed counsel to defend the action. The action resulted in a default judgment against the driver, based upon counsel's failure to file an answer and his inability to practice law in South Dakota. Following the entry of judgment against the driver, Thompson's estate and the driver entered into an agreement in which all of the driver's claims against its insurer and the law firm were assigned to Thompson's estate. Following the assignment, Thompson's estate brought suit and the law firm moved to dismiss. A South Dakota district court granted the motion.

Decision

The Eighth Circuit affirmed the dismissal, predicting that the South Dakota Supreme Court would not allow the assignment of legal malpractice claims. The court cited the "strict privity rule" for legal malpractice claims and noted the prohibition on assignment of personal injury claims. The court expressly distinguished cases involving assigned claims against an insurance agent, emphasizing the heightened levels of confidence and trust implicated in the attorney-client relationship.

Implications

The decision sets a bright line rule prohibiting the assignment of legal malpractice claims under South Dakota law, as the court expressly rejected a "case-by-case approach" to decide the validity of such assignments. As the Eighth Circuit noted, the highest courts in several states

have prohibited the assignment of legal malpractice claims. See [October 2022](#) and [September 2015 Alerts](#).

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