

Calif. Panel Revives Malpractice Suit Against Insurer Attys

By Hope Patti

Law360 (February 5, 2025, 3:48 PM EST) -- A California state appeals court revived an Allstate policyholder's legal malpractice suit against his insurer-appointed attorney, saying the policyholder sufficiently alleged the attorney's drafting of an underlying settlement in a wrongful death suit caused him damages.

In an **unpublished ruling** Friday, the Fourth Appellate District held that Juanito Apao Go's second amended complaint should have survived a demurrer filed by attorney Jay McClaugherty and his firm McClaugherty & Associates.

As such, the panel reversed the lower court's judgment in favor of McClaugherty and his firm and directed the court to enter a new order overruling their demurrer.

The dispute stems from a fatal January 2018 crash involving Go and a pedestrian. Go's insurer, Allstate, appointed McClaugherty to represent the policyholder after the pedestrian's next of kin, Olga Silva, sued Go for motor vehicle negligence and wrongful death, according to the ruling.

The Riverside County District Attorney's office also filed a criminal misdemeanor vehicular manslaughter complaint against Go in November 2018, the ruling stated.

The civil case was settled in January 2019 for Go's full \$1.25 million policy limits, according to the ruling. As part of the deal, Silva also agreed to dismiss her suit against Go with prejudice, with each party bearing their own costs and attorney fees.

However, in November 2020, the court in the criminal case ordered Go to pay Silva more than \$491,000 in restitution for the attorney fees she incurred in the civil suit.

Go sued McClaugherty and his firm in June 2022, asserting legal malpractice and breach of contract claims. In his second amended complaint, Go alleged the attorney failed to properly advise him about the foreseeable consequences of entering into the civil settlement and failed to draft the agreement in a way that minimized Go's liability.

The panel on Friday rejected the contention that Go's complaint is legally defective because the criminal suit and restitution order were outside the scope of McClaugherty and his firm's duty, which was limited to defending Go in the civil suit.

"We reject the suggestion that an attorney cannot be sued for malpractice with respect to matters outside the scope of his or her client contract or retainer agreement," Justice Terry B. O'Rourke wrote for the panel. "Here, Go's allegations demonstrate his claims rely at least in part on an asserted duty within the scope of defendants' representation: to competently draft the settlement and release in the civil wrongful death action."

McClaugherty's duty extended to attempting to preserve Go's ability to offset some or all of the insurance payment against a potential criminal restitution award, Justice O'Rourke said.

Moreover, Go's second amended complaint adequately alleged causation and damages with respect to the settlement's drafting, the panel held.

While it was not possible for the settlement to eliminate Go's legal obligation to pay criminal restitution, the panel noted, Go's argument that the attorney negligently drafted the settlement and should have allocated between economic and non-economic damages to minimize the criminal restitution award supports his legal malpractice and breach of contract claims.

"These are specific allegations of conduct by defendants that prevented a more favorable result, namely Go's ability to offset some of his obligation to pay victim restitution in his criminal case by establishing that allocation," Justice O'Rourke said. "And liberally construed, they support the notion that Go's counsel prevented a more favorable result in Silva's action (as opposed to just Go's criminal case), that is, a more comprehensive settlement inuring to Go's financial benefit."

Representatives of the parties did not immediately respond to requests for comment Wednesday.

Justices Terry B. O'Rourke, Judith McConnell and Jose S. Castillo sat on the panel for the Fourth Appellate District.

Go is represented by Mark E. Ellis of Ellis Law Group LLP.

McClaugherty and McClaugherty & Associates are represented by Lawrence Borys, Pascale Gagnon and Anna Novruzyan of Ropers Majeski PC.

The case is Go v. McClaugherty et al., case number D083772, in the Court of Appeal of the State of California, Fourth Appellate District.

--Editing by Lakshna Mehta.