

Lawyer With Minimal Involvement Sued in Malpractice

BY LAZAR EMANUEL

How involved in a matter does one lawyer in a firm have to become to subject himself to potential liability in malpractice. This question was fundamental to the recent case of *Ocean Ships, Inc. v. Stiles* before Southern District Judge Richard Casey. NYLJ, September 2, 2004.

Thomas Stiles (Stiles), a partner in the law firm of Stiles and Wright, P.C. was retained by Ocean Ships, Inc. (Ocean Ships) in connection with an appeal by Ocean Ships of a verdict in the amount of \$1,071,165 in the New York State Courts. The verdict was in an action brought by a seaman employed by Ocean Ships for injuries sustained onboard a ship. The appeal was from the denial of a motion by Ocean Ships challenging the jurisdiction of the New York court. It is undisputed that Stiles filed a timely notice of appeal but that he failed to perfect the appeal. The Appellate Division dismissed the appeal and then held that Stiles' failure to perfect an appeal constituted adjudication on the merits of Ocean Ships' claim of lack of jurisdiction.

Ocean Ships satisfied the New York State judgment and then sued both Stiles and the Stiles and Wright firm in the Southern District for legal malpractice, breach of contract to perform professional services, and negligence. The district court concluded that the Appellate Division would have dismissed the seaman's claim against Ocean Ships for lack of jurisdiction and ordered judgment against the defendant lawyers for \$1,778,980.24. Stiles appealed the judgment.

Ocean Ships learned that Stiles and Wright had disbanded and did not have sufficient assets to bond the judgment. Ocean Ships thereupon brought a second action in the Southern District against Wright individually. The complaint asserted three claims:

- 1) under New York BCL § 1505, as a shareholder in Stiles and Wright, P.C., Wright was individually liable for malpractice by the P.C.; 2) Wright was personally negligent in failing to ensure that the Ocean Ships appeal was perfected; and 3) Wright had purchased a new home with funds fraudulently transferred from the P.C. with intent to make the firm insolvent and judgment proof.

Subsequently, the 2nd Circuit Court of Appeals vacated the district court's judgment against the law firm and remanded the case for further determination. Thus, at the time of Judge Casey's decision, there was no judgment against the law firm, but the law suit against Wright individually continued. Before Judge Casey was Wright's motion for summary judgment in that law suit.

Judge Casey considered first Ocean Ship's argument that Wright was liable as shareholder and agent of the P.C. under Business Corporation Law § 1505. Under that section, a shareholder is responsible if either (1) he committed the negligence or wrongful acts alleged; or (2) the person committing the acts was under his direct supervision and control. Ocean Ships relied on (1) that Wright was responsible for professional

services he himself had rendered to Ocean Ships.

Wright argued that he had not participated in the decision not to perfect the appeal. Stiles confirmed this: "I did not advise Mr. Wright when I made the decision not to perfect the initial Appeal."

The papers submitted to the Court showed that the firm as a whole had billed Ocean Ships for a total of 217.3 hours of attorney time. This total was divided 203.3 hours to Stiles and 14 to Wright. One bill showed the following distribution: Wright, 2.8 hours; Stiles, 34 hours. Another bill described Wright's services as relaying telephone messages and reviewing a reply brief. This bill charged 118.5 hours to Stiles and 1.8 hours to Wright.

In his deposition, Stiles testified that Wright was only minimally involved and that he, Stiles, had not perfected the appeal because he had mistakenly assumed the appeal would be moot after the court granted a motion for reargument in the original action by the seaman.

Despite the clear showing that Wright's participation had been limited in time and responsibility, Judge Casey refused to grant Wright's motion for summary judgment. "...although the amount of time Mr. Wright spent on the Ocean Ships matter is relatively minimal, the Court finds that there is a factual question as to whether the limited professional services contributed to the malpractice."

On the second issue Wright's negligence Ocean Ships relied on an interesting basis for liability that Wright was at least one of the individuals charged with reading the New York Law Journal for notices of appeal and should have perfected the appeal himself or insisted that Stiles perfect the appeal. Judge Casey acknowledged that "this did not make the most compelling basis for a negligence claim." Nevertheless, Judge Casey concluded that the facts presented by Wright were inadequate to support a motion for summary judgment.

Finally, on the issue whether Wright had fraudulently transferred funds from the P.C. to himself in violation of New York's Debtor and Creditor Law in order to purchase his new home, Judge Casey decided that the issue could not be resolved until the completion of depositions. Because Wright had brought his summary judgment motion before depositions could be held, the motion was denied on this ground as well.