

William A. Franch et al. v. Lottie L. Ankney et vir. - No. 39, 1995
Term

WORKERS' COMPENSATION -- If claimant receiving Workers' Compensation settles third party tort suit without knowledge of, or approval of, employer/insurer, employer/insurer is entitled to a credit reimbursement for the amount of the settlement, as well as for any proven prejudice.

EVIDENCE - Expert Witness -- Testimony of expert witness in attorney malpractice case may be excluded if based on an incorrect interpretation of law.

IN THE COURT OF APPEALS OF MARYLAND

No. 39

September Term, 1995

WILLIAM A. FRANCH et al.

v.

LOTTIE L. ANKNEY et vir.

Murphy, C.J.
Rodowsky
Chasanow
Karwacki
Bell
Raker
Smith, Marvin H.
(Retired, specially assigned)

JJ.

Opinion by Chasanow, J.
Bell, J., dissents

Filed: January 29, 1996

The question presented in this appeal is whether the trial judge abused his discretion in striking the testimony of two expert witnesses in an attorney malpractice case on the ground that the experts' opinions were based on an erroneous interpretation of Maryland law. We hold that the judge's ruling did not constitute an abuse of discretion.

I.

This appeal stems from an attorney malpractice action brought in the Circuit Court for Anne Arundel County in 1988 by Respondent Lottie Ankney (Ankney) against William A. Franch (Franch), Petitioner, alleging negligence in Franch's representation of Ankney in a workers' compensation claim.¹ tna's knowledge ... and without Aetna's approval.... Are you saying that that evidence was irrelevant to the -- to the issues?

[ARNOLD]: To the final issues in the case, yes. *** I think that the end result in the case was that Aetna was entitled to a credit for the net amount received by Mrs. [Ankney] against any future [c]ompensation award and nothing more.

¹Mrs. Ankney's husband, Walter J. Ankney, was a co-plaintiff in the action against Franch, but his status does not affect this appea

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[DEFENSE COUNSEL]: *** [I]sn't it the law in Maryland that Aetna could argue, we have been prejudiced by this unapproved settlement and ... [w]e are entitled to more than a credit, we're entitled to the -- to a credit for the extent of our prejudice, not for the extent of what was actually paid?

* * *

[ARNOLD]: No, sir."

The second expert, Dubois, gave a similar opinion as to the effect of the unauthorized settlement. He testified that whether Ankney had settled the case without Aetna's consent was irrelevant, since Aetna would be entitled only to a credit.²mony.2

²Unlike Arnold, DuBois was not as explicit that Aetna would be entitled only to a credit equal to the amount of the third-party settlement. DuBois did, however, testify that it was irrelevant whether Aetna knew about or consented to the settlement. This testimony carried essentially the same meaning as Arnold's testimony because, were it truly irrelevant whether Aetna consented to the settlement, Aetna would have been entitled to the same credit as if it had consented, i.e., an amount equal to the amount of the settlement. See LE § 9-902(e). Hence, Dubois's testimony was based on the same legal interpretation as Arnold's t