

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 07-4035

FILED

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JUL 08 2008

LEONARD GREEN, Clerk

NATIONAL UNION FIRE INSURANCE
CO. OF PITTSBURGH, PA,

08-1334

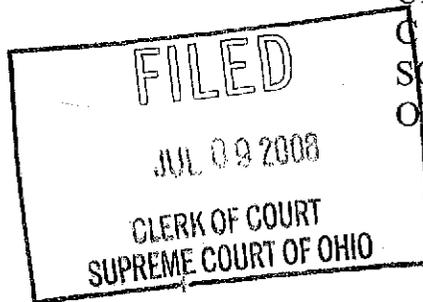
Plaintiff-Appellant,

v.

RICHARD O. WUERTH;
LANE ALTON & HORST,

Defendants-Appellees.

ON APPEAL FROM THE
UNITED STATES DISTRICT
COURT FOR THE
SOUTHERN DISTRICT OF
OHIO



BEFORE: MARTIN and BATCHELDER, Circuit Judges; JORDAN, District Judge.*

CERTIFICATION ORDER

LEON JORDAN, District Judge. Appellant National Union Fire Insurance Co. of Pittsburgh, PA (“National Union”) appeals the district court’s summary judgment dismissing its legal malpractice complaint against appellees Richard O. Wuerth and Lane Alton & Horst (“Lane Alton”). Resolution of this appeal requires us to determine whether, under Ohio law, a legal malpractice claim can be maintained directly against a law firm when all of the relevant principals and employees have either been dismissed from the lawsuit or were never sued in the first instance. Because this important question of Ohio law may be

* The Honorable R. Leon Jordan, United States District Judge for the Eastern District of Tennessee, sitting by designation.

determinative of the present appeal and because there is no clear controlling precedent, we hereby certify the question to the Supreme Court of Ohio pursuant to that Court's Rule of Practice XVIII.

I

On February 21, 2003, National Union filed suit alleging malpractice and misrepresentation by Lane Alton, a law firm, and by Wuerth, a partner in the firm. The complaint sought to hold Lane Alton "vicariously liable for the wrongful acts, errors, and/or omissions of Wuerth, as well as for its own wrongful acts, errors and/or omissions."

On July 17, 2007, the district court granted appellees' summary judgment motion. The court concluded that the claims against Wuerth were barred by Ohio's one-year statute of limitations. In granting summary judgment to Lane Alton, the district court reasoned: (1) Lane Alton could not be vicariously liable for Wuerth's alleged malpractice because the statute of limitations had run as to claims against Wuerth individually; (2) Lane Alton could not be vicariously liable for the alleged malpractice of any other agent because National Union did not sue any agent other than Wuerth; and (3) Lane Alton cannot be directly liable for malpractice because it is not an attorney. The present appeal followed.

II

It is generally recognized that "[a] law firm is subject to civil liability for injury legally caused to a person by any wrongful act or omission of any principal or employee of the firm who was acting in the ordinary course of the firm's business or with actual or

apparent authority.” Restatement (Third) of the Law Governing Lawyers § 58 (2000). The unsettled issue now before this panel is whether, under Ohio law, a legal malpractice claim can be maintained directly against a law firm when all of the relevant principals and employees have either been dismissed from the lawsuit or were never sued in the first instance.

A number of cases have recognized that an attorney-client relationship can exist under Ohio law between a client and a firm. *Baker v. LeBouef, Lamb, Leiby & MacRae*, No. C-1-92-718, 1993 WL 662352 at *6 (S.D. Ohio Oct. 7, 1993); *Biddle v. Warren Gen. Hosp.*, 715 N.E.2d 518, 526 (Ohio 1999); *Luce v. Alcox*, 848 N.E.2d 552, 556 (Ohio Ct. App. 2006); *Henry Filters, Inc. v. Peabody Barnes, Inc.*, 611 N.E.2d 873, 876-77 (Ohio Ct. App. 1992). In its briefing to this court, National Union contends that “Ohio courts have continuously held and acknowledged that an attorney-client relationship can exist between a client and a law firm, and have specifically acknowledged that a direct claim for legal malpractice can be maintained against a law firm.” However, the citations provided by appellant all involve cases in which both the individual lawyer and the law firm were sued, *see Baker*, 1993 WL 662352 at *1; *Rosenberg v. Atkins*, No. C-930259, 1994 WL 536568 (Ohio Ct. App. Oct. 5, 1994); *Blackwell v. Gorman*, 142 Ohio Misc. 2d 50, 52 (Ohio Com. Pl. 2007), and/or in which the existence of a right of action against the law firm appears to have been assumed rather than at issue. *See id.*; *N. Shore Auto Sales, Inc., v. Weston, Hurd, Fallon, Paisley & Howley, L.L.P.*, No. 86332, 2006 WL 250733 (Ohio Ct. App. Feb 2, 2006).

Lane Alton quotes Ohio authority for the proposition, “Malpractice is ‘professional misconduct [by] members of the medical profession and *attorneys*.’” See *Dingus v. Kirwan*, No. E-05-082, 2006 WL 2384070, at *2 (Ohio Ct. App. Aug. 18, 2006) (emphasis added) (quoting *Richardson v. Doe*, 199 N.E.2d 878, 880 (Ohio 1964)). However, neither *Dingus* nor *Richardson* expressly support the proposition that malpractice can only be committed by an individual lawyer as opposed to a firm.

Lane Alton similarly quotes additional Ohio authority for the proposition that malpractice concerns “damages resulting from the manner in which *the attorney* represented the client[.]” See *Muir v. Hadler Real Estate Mgmt. Co.*, 446 N.E.2d 820, 822 (Ohio Ct. App. 1982) (emphasis added). *Muir*, however, also does not expressly hold that “the attorney” must be an individual rather than a firm.

Lane Alton quotes *Vahila v. Hall*, 674 N.E.2d 1164, 1165-66 (Ohio 1997) for a definition of legal malpractice that addresses only “the attorney.” Like *Dingus*, *Richardson*, and *Muir*, however, *Vahila* does not expressly hold that “the attorney” must be an individual. Further, *Vahila* extensively cites with approval *Krahn v. Kinney*, 538 N.E.2d 1058 (Ohio 1989). *Krahn* was a malpractice case filed against both an individual attorney and a law firm. See *id.* at 1059 (syllabus). Like the other cases discussed herein, *Krahn* does not hold that a malpractice suit can only be filed against an individual, nor does it address whether a claimant can sue a law firm if the agent is not also a defendant.

Having reviewed the cited authorities and having heard oral argument, we find that an unsettled question of Ohio law may be determinative of the present appeal and that there is no clear controlling precedent in the decisions of the Supreme Court of Ohio. We therefore certify the following question:

Under Ohio law, can a legal malpractice claim be maintained directly against a law firm when all of the relevant principals and employees have either been dismissed from the lawsuit or were never sued in the first instance?

III

In accordance with Rule XVIII of the Rules of Practice of the Supreme Court of Ohio, we provide the following required information:

(A) Style of the case: *National Union Fire Insurance Co. of Pittsburgh, PA v. Wuerth*, No. 07-4035.

(B) Facts and questions of law: the circumstances out of which the question of state law arises, and the question itself, has been explained *supra*.

(C) The names of the parties: National Union Fire Insurance Co. of Pittsburgh, PA; Richard O. Wuerth; and Lane Alton & Horst.

(D) The names, addresses, and telephone numbers of counsel for each party:

Counsel for National Union Fire Insurance Co. of Pittsburgh, PA:
Joseph M. Callow, Jr. 61814
Danielle M. D'Addesa 76513
Keating, Muething & Klekamp
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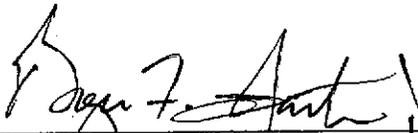
Counsel for Richard O. Wuerth and Lane Alton & Horst:
Benjamin J. Parsons 76813
Lawrence David Walker 12036
Taft Stettinius & Hollister
21 E. State Street
Suite 1200
Columbus, OH 43215
614-221-2838

(E) Designation of one of the parties as the moving party:

The moving party (Petitioner): National Union Fire Insurance Co. of
Pittsburgh, PA

The adverse parties (Respondents): Richard O. Wuerth; Lane Alton &
Horst

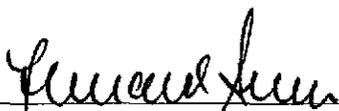
It is ORDERED that the above question be certified to the Supreme Court of
Ohio and forwarded to the clerk of that Court under Rule XVIII, Rules of Practice of the
Supreme Court of Ohio.



Boyce F. Martin, Jr.,
U.S. Court of Appeals for the Sixth Circuit

PROOF OF SERVICE

True copies of the foregoing Certification Order were sent this 8th day of July, 2008, by ordinary United States Mail, to Joseph M. Callow, Jr. and Danielle M. D'Addesa, Keating, Muething & Klekamp, One E. Fourt Street, Suite 1400, Cincinnati, Ohio 45202, counsel for plaintiff-appellant; Benjamin J. Parsons and Lawrence David Walker, Taft Stettinius & Hollister, 21 E. State Street, Suite 1200, Columbus, Ohio 43214, counsel for defendants-appellees.



Leonard Green, Clerk

(Seal)