NEWS

Katten Faces $950M Malpractice Lawsuit After Judge Rejects DC Damages Rule

(Courtesy photo).

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Legal Malpractice

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A California trial judge has cleared the way for a landmark malpractice lawsuit against Katten Muchin Rosenman, rejecting a defense request to apply a Washington, D.C., law that could have gutted the plaintiff's claims for nearly $1 billion in damages.

The order Friday from Orange County Superior Court Judge William D. Claster reverses a June 10 tentative ruling in Katten's favor, with the judge saying he initially "failed to correctly analyze where the alleged wrongful conduct occurred and then apply the governmental interest test in light of that revised analysis."

The ruling sets the stage for a high-stakes August trial in what the plaintiff's lawyers say could be one of the largest legal malpractice cases ever seen in the country.

It was a choice-of-law test that pitted California's plaintiff-friendly compensatory negligence law against Washington, D.C.'s defense-friendly contributory negligence law. Katten's attorneys at Munger, Tolles & Olson in Los Angeles argued the latter should apply because the Katten partner named in the lawsuit, Claudia Callaway, works in the D.C. office.

But lawyers for lender CashCall Inc., said the plaintiff company was harmed in California by advice "deliberately transmitted into California," and they said applying contributory negligence law would upend 46 years of in-state precedent established when the California Supreme Court determined the rule was unjust in *Li v. Yellow Cab Co*.

"There is no choice of law shortcut for legal malpractice claims that allows a court to consider only where the attorney is barred or located and ignore California's predominant interest," according to a brief signed by CashCall's lawyer Jennifer L. Keller of the Irvine, California-based firm Keller/Anderle.

The judge's 11-page order said both California and D.C. "have strong interests in the application of their own rule of law." But he determined California's interest should prevail because, while Katten's work for CashCall was mostly performed in D.C., "where the work was performed is a different question from where the tort and the resulting injury occurred."

"Here, defendants allegedly provided bad legal legal advice to a California company at its Orange County headquarters. That is, while the majority of Katten's work may have been performed in the district, the tortious conduct, i.e., the 'last event,' took place in California," Claster wrote.

Had Claster ruled the other way, D.C.'s contributory damages law would have eliminated all possible damages for CashCall if jurors determine the company bears even a small responsibility for what occurred. But because he's applying California's contributory damages law, the company's damages can only be reduced by the amount jurors deem the company responsible. For example, if jurors found CashCall 10% responsible, it would still receive 90% of available damages, whereas under D.C. law it would get nothing.

CashCall's counsel praised the decision in a statement Sunday night.

"Katten's attempt to get the court to apply the archaic and unfair doctrine of contributory negligence, rejected for decades by the California Supreme Court, was something of a Hail Mary pass. That pass fell incomplete," Keller said.

Filed in 2017, the lawsuit blames Callaway for advising a doomed tribal lending program that wrecked the company and exposed it to lawsuits across the country beginning in 2013, including state attorney general actions and a $275 million lawsuit from the Consumer Financial Protection Bureau. The lawsuit names Callaway as an individual defendant in addition to Katten. The most recently amended complaint pegged damages at "more than $1 billion," but that's since dropped to $750 million to $950 million after Claster in May limited parts of CashCall's expert's opinion.

The judge also in June rejected a motion from Katten's defense team, led by Munger Tolles chairman Brad Brian, for judicial and collateral estoppel seeking to bar CashCall from claiming the lending program at issue was blatantly illegal, because of the company's prior statements in other cases that it was lawful. The judge called the alleged conflicting positions "anything but clear cut in the context of this complicated case."

Trial is scheduled to begin Aug. 16.