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Law Firm Can Be Held Responsible for Malpractice Against an Insolvent Party

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World Marketing, LLC, World Marketing Atlanta, LLC, and World Marketing Dallas, LLC (together “World Marketing”) retained the law firm Crane, Heyman, Simon, Welch & Clar (“Crane”) and filed petitions for bankruptcy. A putative class of former World Marketing employees sued World Marketing for failure to serve timely notice of plant closings or mass layoffs. The matter was eventually settled and the liquidating trustee for the World Marketing Liquidating Trust (“Trustee”) sued Crane for failing to advise World Marketing of its obligations.

Crane moved for summary judgment, arguing that that only World Marketing’s creditors, not the Trustee, had suffered any actual damages. Crane explained that its alleged failure to advise World Marketing had no practical effect, as World Marketing was going out of business and the claim against it merely “added another unpayable liability onto [its] mountain of unpayable debts.” *Id.* at 2. Moreover, Crane insisted that in a legal malpractice action based on an attorney’s failure to properly prosecute a claim, “the plaintiff must plead and prove the existence of a solvent defendant in the underlying claim.” *Id.* at 1. The Court disagreed, explaining that Illinois courts distinguish between legal malpractice claims involving attorneys hired to prosecute rather than defend a claim. In the latter situation, an unpaid judgment constitutes proof of actual damages in a legal malpractice action. Thus, “an insolvent estate can be damaged by a judgment against it,” and the “very fact of entry of judgment constitutes damage and harm sufficient to permit recovery.” *Id.* at 3.

Crane also asserted that public policy supports its position because the Trustee and its law firm defended against the former employees’ claim in bad faith, which the Trustee denies. Even if that were true, the Court responded, the law provides other remedies in lieu holding that law firms

may commit malpractice against insolvent defendants with impunity. Crane's motion was therefore denied.

Newman as Tr. of World Mktg. Tr. v. Crane, Heyman, Simon, Welch, & Clar, 2020 WL 3250742 (N.D. Ill. June 16, 2020)

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