Discovery Goes Forward in Morgan & Morgan Malpractice Suit as Savannah Judge Mulls Arbitration

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Alex Anteau

What You Need to Know

- Morgan & Morgan is being sued for legal malpractice after an ex-client found they settled for far less than an insurance policy limit.
- Now the firm is asking a Chatham County court to remove the case for arbitration, per their agreement with the client.
- Since the state Supreme Court's ruling that firms are allowed to have arbitration agreements with clients, there haven't been any decisions on what those agreements should look like.

Chatham County, Georgia, State Court Judge Elizabeth Coolidge greenlit discovery in a legal-malpractice suit brought against Morgan & Morgan on Friday, as she weighed moving the case to arbitration in accordance with an agreement the plaintiff signed when the firm took him on as a client.

Coolidge had paused discovery on the case because Morgan & Morgan wasn't responding to discovery but allowed the process to go forward after Friday's hearing.

"This is an important issue," said **Richard Robbins of Robbins Alloy Belinfante Littlefield**, an attorney who specializes in legal malpractice. "When you have firms like Morgan & Morgan, with a heavy volume of cases, putting arbitration provisions in their agreements, attorneys want to know how that will play out in real life. Do you get smaller awards and smaller settlements or do you get bigger awards and bigger settlements?"

The *Innovative Images v. The Summerville Firm* opinion, issued in 2020, was the last time the Supreme Court weighed in on the issue. According to Robbins, that opinion confirmed that firms could have arbitration provisions in their client agreements, but there haven't been any follow-up decisions since then.

"Until [2020], I think it was the exception rather than the rule to have arbitration provisions," Robbins said. "I do know that some lawyers have changed their engagement letters to have arbitration provisions for legal malpractice claims [but] I'd be surprised if more than a significant minority of lawyers use them … It's not a standard practice."

As for the case at hand, trucker Brian Brown, represented by Brent Savage of Savage Turner Pickney Savage Sprouse and Mark Tate of the Tate Law Group, brought the malpractice suit against Morgan & Morgan and the firm's attorney Seth Diamond for legal malpractice after the firm failed to secure the full amount of a car insurer's $250,000 auto insurance policy and $1 million personal umbrella policy.Brown retained the firm after a trucking accident. Then-plaintiff's counsel Morgan & Morgan first sent the defense a demand for $750,000, signed a limited release agreement accepting it and then made another, unsuccessful demand to recover an additional $500,000.

Brent Savage Sr., with Savage Turner Pinckney & Savage. (Courtesy photo)

According to the complaint, this happened because Morgan & Morgan "delegated legal duties to an individual who possessed no appropriate legal education, training or experience [and] was not a member of the State Bar of Georgia." The plaintiffs ultimately asked the court for a remedy including punitive damages, attorney fees, a refund on the legal fees Brown paid Morgan & Morgan, a jury trial and at least $5 million for general damages.

At Friday's hearing, Savage said the reason his client found out about the total coverage amount is because a caseworker leaked the information. Much of Savage's argument focused on what he viewed as the disparity and hypocrisy of Morgan & Morgan's advertising and how the firm conducts its business.

"Advertising is advertising. Opinions are Opinions. That doesn't change the contract or the court's legal analysis based on the law," Morgan & Morgan representative Kim Cofer Butler of Ellis Painter replied.

However, in her questioning, Coolidge focused on the plaintiff's position that the contract Brown signed was "essentially void" because Morgan & Morgan's Jacksonville satellite office wasn't registered to do business in Georgia at the time of the signature.

Butler also addressed the following points in her argument:

- **Does the fact that the contract was online change its validity?** No. Butler said, "Online contracts are valid even when they contain arbitration provisions."
- **Does it matter that Morgan & Morgan didn't sign the contract?** No. Butler said, "A binding agreement to arbitrate disputes can exist even where only one party signs."
- **Is the arbitration provision still binding even if it wasn't initiated?** Yes. Butler said the statutory law pertaining to initiated arbitration provisions refers to employment contracts; attorney-client relationships are more similar to contract work.
- **Can you have an arbitration provision in a contract for legal services?** Yes. Butler said, "The Georgia Supreme Court has made it crystal clear *Innovative Images v. The Summerville Firm* … the General Assembly established a clear public policy in favor of arbitration by virtue of the fact that we have an arbitration code." Butler said that the last point applies, even if a lawyer didn't explain the arbitration provision, thereby violating the Georgia Bar's Rules of Professional Conduct.

"If Morgan & Morgan Jacksonville doesn't have the ability to bring a claim in the state of Georgia because they're not registered here, how am I supposed to enforce a contract that's essentially unenforceable?" Coolidge asked Butler.

“My understanding of that corporate provision is that if you have not registered to do business in a state, it’s basically an administrative fine because you haven’t advised the secretary of state you’re here and doing business,” Butler said. “So I don’t think it bars on it, but I will say I haven’t studied it in any great detail.”

Butler indicated that if Coolidge ruled in the plaintiff’s favor, she would like a certificate of immediate review.

The case is *Brown v. Morgan & Morgan*, No. STCV23-00433, in the State Court of Chatham County.