



## And The Defense Wins

Published 12-04-12 by DRI

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DRI member [Joe Kingma](#) of **Carlock, Copeland & Stair, LLP** in Atlanta, teamed with a colleague to win summary judgment in the Southern District of Georgia on September 25, 2012. The plaintiff owned a large retail operation that fell on hard times. The defendant law firm represented the plaintiff and his corporation in the defense of creditor claims and then in bankruptcy. While the corporation was in bankruptcy, the plaintiff signed a personal guaranty on a big portion of the store's debt to avoid the appointment of a trustee. He also authorized the law firm to acknowledge service on his behalf and then fled the country. He was sued on the guaranty, and the defendant law firm accepted service on his behalf. No response was timely filed, and the suit went into default and was ultimately paid by the plaintiff. He sued the law firm, claiming it breached its duties in (1) advising him to sign the guaranty, and (2) allowing the suit to go into default.

Defense counsel argued, in part, that judgmental immunity protected the advice to sign the guaranty and that the plaintiff could show no damages proximately caused by the alleged failings. With this motion pending, the plaintiff, through his corporation, sought to bring adversary claims in the bankruptcy court against the defendant law firm. Defense counsel acted quickly to negotiate a settlement of those claims with the trustee. While the debtor corporation, through the plaintiff, vigorously opposed the settlement, the bankruptcy court approved it after a daylong hearing.

Finally, the U.S. District Court granted summary judgment to the law firm on the individual plaintiff's claims. The bankruptcy court's approval of the settlement was appealed, and the grant of summary judgment may be as well. The district court's well-reasoned 39-page order offered this observation, which is applicable to many malpractice claims: "The polished lens of hindsight makes easy play of counterfactuals so caution must be taken to guard against its prejudices."

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