

279 So.3d 181

District Court of Appeal of Florida, Fourth District.

KASOWITZ BENSON TORRES LLP, Petitioner,

v.

Steven MARIANO and Simpson  
Thacher & Bartlett LLP, Respondents.

No. 4D19-1209

|  
[September 18, 2019]

### Synopsis

**Background:** Client brought malpractice action against law firm representing client in litigation initiated by hedge fund investors who had purchased stock from client's company. The Circuit Court, 17th Judicial Circuit, Broward County, [John B. Bowman](#), J., issued order denying firm's motion to stay or abate action until the underlying litigation was resolved. Firm petitioned for writ of certiorari.

**[Holding:]** The District Court of Appeal held that action should have been abated.

Petition granted; order quashed.

West Headnotes (3)

### [1] Limitation of Actions

🔑 Negligence in performance of professional services

A claim of legal malpractice generally does not accrue until the underlying litigation is resolved with an adverse outcome to the client.

### [2] Abatement and Revival

🔑 Premature action

If a client files a complaint for legal malpractice while the underlying litigation is pending, the case should be abated upon a showing that the outcome of the underlying litigation will determine whether the client incurred any

damages as a proximate cause of the alleged malpractice.

### [3] Abatement and Revival

🔑 Premature action

Client's legal malpractice claim against law firm representing client in ongoing litigation initiated by hedge fund investors who had purchased stock from client's company should have been abated until the underlying litigation was resolved, where outcome of litigation would determine whether client incurred damages as a result of firm's alleged malpractice in drafting affirmative defenses, and outcome of client's malpractice claim against its previous law firm would determine whether he incurred damages as a result of firm's alleged malpractice in failing to advise him that he had viable claims against previous firm.

Petition for writ of certiorari to the Seventeenth Judicial Circuit, Broward County; [John B. Bowman](#), Judge; L.T. Case No. CACE-17-021733 (02).

### Attorneys and Law Firms

[Kelly Anne Luther](#), [Danielle Fannie Moriber](#) and [Giselle Gonzalez Manseur](#) of Kasowitz Benson Torres LLP, Miami, for petitioner.

[William R. Scherer](#), [Russell R. O'Brien](#) and [Eric M. Yesner](#) of Conrad & Scherer LLP, Fort Lauderdale, for respondent, Steven Mariano.

### Opinion

Per Curiam.

Kasowitz Benson Torres LLP seeks certiorari review of an order denying its motion to stay or abate a legal malpractice action until the underlying litigation is resolved. We grant the petition and quash the order because the outcome of the underlying litigation will determine whether the plaintiff incurred any damages as a result of Kasowitz's alleged malpractice.

The plaintiff, Steven Mariano, and his company, Patriot National, sold shares of stock to certain hedge fund investors in late 2015. Simpson Thacher & Bartlett LLP represented Mariano and Patriot National in connection with the transaction. The investors later sued both Mariano and Patriot National in federal court in New York. Kasowitz briefly represented Patriot National in the New York litigation, which is still ongoing.

In 2017, Mariano sued both Simpson and Kasowitz for legal malpractice. As to Simpson, he claims the firm negligently drafted documents related to the hedge fund transaction and failed to adequately warn him of the risks of the transaction. As to Kasowitz, he claims the firm negligently drafted affirmative defenses in the New York litigation and failed to advise him of viable claims against Simpson for malpractice. Both firms moved to stay or abate the action, arguing that Mariano's claims were premature because the underlying litigation was still ongoing. The trial court denied the motions, and Kasowitz timely filed this petition.

[1] [2] A claim of legal malpractice generally does not accrue until the underlying litigation is resolved with an adverse outcome to the client. See *Perez-Abreu, Zamora & De La Fe, P.A. v. Taracido*, 790 So. 2d 1051, 1054 (Fla. 2001) (citing *Blumberg v. USAA Cas. Ins. Co.*, 790 So. 2d 1061, 1065 (Fla. 2001)); *Silvestrone v. Edell*, 721 So. 2d 1173, 1175 (Fla. 1998). If the client files a complaint while the

underlying litigation is pending, the case should be abated upon a showing that the outcome of the underlying litigation will determine whether the client incurred any damages as a proximate cause of the alleged malpractice. See *Perez-Abreu*, 790 So. 2d at 1054; *Burgess v. Lippman*, 929 So. 2d 1097, 1098 (Fla. 4th DCA 2006).

[3] Here, Mariano's claims against Kasowitz should have been abated because the outcome of the underlying litigation will determine whether Mariano incurred any damages as a proximate result of Kasowitz's alleged instances of malpractice. More specifically, the outcome of the New York litigation will determine whether Mariano incurred damages as a result of Kasowitz's alleged malpractice in drafting the affirmative defenses, and the outcome of the malpractice claims against Simpson will determine whether he incurred damages as a result of Kasowitz's alleged malpractice in failing to advise him that he had viable claims.

Accordingly, we grant the petition for writ of certiorari and quash the order denying the motion to stay or abate as to Kasowitz.

Gross, Gerber and Klingensmith, JJ., concur.

#### All Citations

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