

For: LeClairRyan, Boston
From: Parness & Associates, Aberdeen, N.J.

FOR IMMEDIATE RELEASE

Court Decision Enhances Attorney Advocacy Rights, Says LeClairRyan Attorney

Massachusetts case protects lawyers from suits relating to client representation, says William E. Gildea

BOSTON (7/24/18)— A recent ruling by the Massachusetts Superior Court establishes that an attorney cannot be sued for advocating on behalf of a client by threatening to publicly question the reputation of an adversary during pre-suit negotiations while litigation is still under consideration, according to William E. Gildea, a Boston-based associate at national law firm LeClairRyan.

“In *Wise v. Big Tuna, LLC et al*, 2018 WL 2049357 (Mass. Super. Ct. Feb. 26, 2018), Betsy Wise originally brought claims for misappropriation of corporate funds, breach of contract, and other allegations against other company owners and LLC members in which Wise is a member and shareholder,” Gildea writes in a column, [Absolute Litigation Privilege Bars Claims Arising Out of Settlement Negotiations](#). The post appears in LeClairRyan's Summer 2018 Accountant and Attorney Liability NewsBrief.

Wise also named attorney Elliot M. Loew as a defendant “for his role in acting as an attorney on behalf of the company and LLC during alleged unauthorized transactions unrelated to the company and LLC’s operations, and assisting the defendants in delaying distributions that Wise was entitled to,” adds Gildea, a member of LeClairRyan’s Business Litigation practice. “Wise also claimed Loew breached his fiduciary duty by obstructing her from discovering company documents.”

Loew subsequently asserted claims for abuse of process, tortious interference with a contractual relationship, and civil conspiracy against Jeffrey Fink, Wise’s “settlement counsel” during negotiations between Wise and the company’s president. “Loew further alleged in his Third-Party Complaint that he was named as a defendant only to pressure or advise his client to offer a larger settlement amount, and disrupt their attorney-client relationship,” Gildea summarized. “Loew alleged Fink threatened to publicly question the reputation of the company and another shareholder, and refer the case to litigation counsel if no agreement was reached.”

The Court said Loew’s allegation that Fink “threatened the reputation of the company and shareholder” cannot serve as a basis for any claim against Fink, because the statements were made while this litigation was being contemplated and are therefore protected by the absolute litigation privilege, explains Gildea. The Court further dismissed the other claims because they failed to state a claim and were far too conclusory.

“This decision is influential because it bolsters the absolute litigation privilege,” Gildea says. “Attorneys can still zealously advocate for their clients without fear of retaliatory litigation. Surely, attorneys will continue to remain civil and professional when negotiating their clients’ interests. Looking forward, at least in Massachusetts, attorneys can feel confident when negotiating on behalf of a client and still maintaining their ethical duties. The Court’s order will dissuade prospective plaintiffs from filing claims related to prior litigation.”

The full column is available at:

<https://www.leclairryan.com/pubs/xprPubDetail.aspx?xpST=PubDetail&pub=1153>

About LeClairRyan

As a trusted advisor, LeClairRyan provides business counsel and client representation in corporate law and litigation. In this role, the firm applies its knowledge, insight and skill to help clients achieve their business objectives while managing and minimizing their legal risks, difficulties and expenses. With offices from coast to coast, the firm represents a wide variety of clients nationwide. For more information about LeClairRyan, visit www.leclairryan.com.

###

Press Contacts: At Parness & Associates Public Relations, Bill Parness, (732) 290-0121, bparness@parnesspr.com or Lisa Kreda, lkreda@parnesspr.com