

Oklahoma Supreme Court Finds Attorney Who Previously Represented Insurer Can Represent Insured in Subsequent Similar Bad Faith Suit

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As discussed in one of my prior blog posts <https://www.sandbergphoenix.com/perspectives/blogs/professional-liability-blog/whose-side-are-you-on-washington-supreme-court-finds-firm-that-previously-defended-insurer-can-represent-policyholder-in-bad-faith-suit-against-insurer> the issue of whether a law firm or lawyer who previously represented an insurer can switch sides and sue the insurer for bad faith is not a straightforward issue. The Oklahoma Supreme Court recently held that a law firm was not disqualified from representing a plaintiff in a bad faith suit against an insurer after the law firm previously represented the insurer in a factually similar suit in which the law firm did not obtain the insurer's confidential information.

An inmate sued the Sheriff alleging a sexual assault/rape by a police officer during the incarceration. The county was insured by the Association of County Commissioners of Oklahoma Self-Insured Group (ACCO-SIG). ACCO-SIG defended the Sheriff and made settlement offers which were refused. Judgment was eventually entered against the Sheriff well in excess of the policy limits. ACCO-SIG paid its liability limits; however, the Board of County Commissioners sued ACCO-SIG for bad faith. The Board alleged that ACCO-SIG breached its contract by failing to settle the underlying suit.

The Board was represented by an attorney and a firm who had represented ACCO-SIG in a nearly identical matter a few years earlier. A trial court denied ACCO-SIG's motion to disqualify the firm.

On appeal the question was whether the case in which the Board's lawyer previously represented ACCO-SIG was substantially similar to the current case, and whether he obtained confidential information in the prior case. Even though the facts of the two lawsuits were not identical, the lawsuits involved the same type of confidential information.

Despite the two representations being similar, the Oklahoma Supreme Court held, disqualification was not required because in the prior suit, the lawyer did not obtain knowledge of ACCO-SIG's material or confidential information. The evidence established in the prior lawsuit he had only very limited contact with ACCO-SIG.

The Oklahoma Supreme Court agreed with the trial court's description of the issue as a "close call" but found disqualification was not warranted under the circumstances. There was no discussion as to whether other attorneys in the law firm obtained confidentiality by their work on the prior matter and whether knowledge of confidential information should be imputed to their colleague working on the current matter.

Case Citation: Board of County Commissioners of Harmon County v. Association of County Commissioners of Oklahoma, 485 P.3d 234 (Ok. 2021)