IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

EDWARD BENEVILLE, JR., WINCHESTER INSURANCE COMPANY, LTD.,	:	
Plaintiffs,	:	
v.	:	Civil Action No. 03-474 JJF
FRANCIS PILEGGI, ESQUIRE, and FOX ROTHSCHILD, LLP,	:	
Defendants.	:	

Kevin W. Gibson, Esquire, of GIBSON & PERKINS, P.C., Wilmington, Delaware.
Attorney for Plaintiffs Edward Beneville, Jr. and Winchester Insurance Company, Ltd.

Jeffrey M. Weiner, Esquire, of LAW OFFICES OF JEFFREY M. WEINER, Wilmington, Delaware.
Attorney for Defendants Francis Pileggi, Esquire and Fox Rothschild, LLP.

MEMORANDUM OPINION

April 20, 2005
Wilmington, Delaware

FARNAN, District Judge

INTRODUCTION

This action was brought by Plaintiffs, Edward Beneville, Jr. and Winchester Insurance Company, Ltd. ("Winchester"), against Defendants, Francis Pileggi and Fox Rothschild LLP, alleging that Defendants committed legal malpractice by failing to inform Mr. Beneville, of material changes in a business transaction document. A three day bench trial was held on the claims and defenses raised by the parties. This Memorandum Opinion constitutes the Court's Findings of Fact and Conclusions of Law on the issues tried before the Court.

JURISDICTION AND VENUE

The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds $75,000, exclusive of interest and costs, and the matter arises between citizens of different states.

Venue in this judicial district is uncontested and is appropriate pursuant to 28 U.S.C. § 1391 because the acts allegedly giving rise to Plaintiffs' cause of action occurred in the District of Delaware.

PROCEDURAL BACKGROUND

Plaintiffs filed their Complaint in this action on May 15, 2003, alleging claims for negligence against Defendant Mr. Pileggi individually, and against Fox Rothschild LLP pursuant to the doctrine of respondeat superior. On March 8, 2004,

Plaintiffs filed an Amended Complaint (D.I. 50) adding a count of Breach of Fiduciary Duty against Defendant Pileggi. However, at trial, Plaintiffs withdrew the count of Breach of Fiduciary Duty. (Trial Tr. at B-112-13.)

Defendant Fox Rothschild filed a counterclaim alleging that Fox Rothschild is entitled to the entry of judgment against Plaintiffs, jointly and severally, in the amount of $251,070.34 plus pre- and post-judgment interest since July 31, 2002 for legal services rendered between February 2001 and October 2002.

In addition to naming Defendants in their Amended Complaint, Plaintiffs also sued Juristaff, Inc. and Robert Unterberger, Esquire. On October 17, 2003, the parties stipulated to dismiss all claims and crossclaims against Juristaff, Inc. On September 16, 2004, during trial, the parties stipulated to dismiss all claims and crossclaims against Mr. Unterberger. (Trial Tr. at B-112.)

Separate motions to dismiss were filed by Mr. Pileggi and Fox Rothschild, and Mr. Unterberger. The Court denied both motions.

Trial commenced on September 15, 2004, and was completed on September 17, 2004. Post-trial briefing was completed in October 2004.

FINDINGS OF FACT

The Court makes the following findings with regard to the

factual background related to this action. The Court makes additional findings where necessary in the context of its legal analysis under the heading "Conclusions of Law."

I. Parties

1. Plaintiff Edward Beneville, Jr. is a citizen of California. (D.I. 153 at 1.)

2. Plaintiff Winchester Insurance Company, Ltd. ("Winchester") is incorporated in the British Virgin Islands. (D.I. 153 at 1.)

3. Mr. Beneville established Winchester as an offshore insurance company and transferred two-thirds of his shares in CARNET into Winchester. (Trial Tr. at A-23.)

3. Defendant Francis Pileggi, Esquire is a citizen of Pennsylvania. (D.I. 153 at 1.) Mr. Pileggi is licensed to practice law and does practice law in the state of Delaware. (D.I. 50 at 2.)

4. Defendant Fox Rothschild, LLP is a Pennsylvania Limited Liability Partnership. (D.I. 153 at 1.)

II. Escrow Agreement

6. Mr. Beneville, along with a business associate, Michael York, were founders of and shareholders in a general insurance agency, the CARNET Holding Corporation ("CARNET"). (Trial Tr. at A-14.)

7. CARNET was a Delaware corporation. (D.I. 153 at 1.)

8. At the time of the events at issue in this lawsuit, Mr. Beneville and Winchester owned 37% of the capital stock in

CARNET. (Trial Tr. at A-24.)

9. By 2000, the relationship between Mr. Beneville and the other shareholders deteriorated. (D.I. 153 at 1.)

10. In the fall of 1999, Mr. Beneville retained Mr. Pileggi to file a derivative lawsuit against CARNET. (Trial Tr. at A-20, 43.)

11. The derivative lawsuit was filed in Delaware Chancery Court in December 1999. (Trial Tr. at B-51.)

12. In January 2000, the parties to the derivative lawsuit "came to the table and agreed that they would sell the company." (Trial Tr. at A-20.)

13. On or about October of 2000, PC Group Acquisition I, Inc. ("PC Group"), a Florida corporation, expressed an interest in purchasing the capital stock in CARNET. (D.I. 153 at 2.)

14. Mr. Beneville and the other CARNET shareholders negotiated the purchase directly with PC Group. As Mr. Beneville received draft versions of the Stock Purchase Agreement from the other CARNET shareholders and PC Group, he would make changes to them. Mr. Beneville forwarded some of the draft Stock Purchase Agreements to Mr. Pileggi. (Trial Tr. at A-25-A-27.) Mr. Pileggi was reviewing the Stock Purchase Agreement's legal aspects; Mr. Beneville was reviewing the insurance aspects. (Trial Tr. at B-140.)

15. The Stock Purchase Agreement dated February 28, 2001,

provided that PC Group would pay $1,925,000 for 77% of CARNET's outstanding stock, which included Plaintiffs' 407 shares. The purchase price was to be paid as follows: $194,583 at closing and the remaining sum of $1,730,417 to be secured by a Promissory Note, Escrow Agreement, and a guarantee from Atlantic Financial Services, LLC, a Georgia Limited Liability Company, related to the buyer and to be paid out in quarterly installments pursuant to a certain formula as defined in the Promissory Note. (PX 3.)

16. The Stock Purchase Agreement provided that the PC Group would purchase a one million dollar life insurance policy for Mr. Beneville. (PX 3.)

17. On February 23, 2001, Mr. Pileggi advised Mr. Beneville of the risks of closing without a clear, signed Escrow Agreement. (DX 19, 30.)

18. On February 23, 2001, Mr. Pileggi expressed his concerns to Mr. Beneville that the Purchase Agreement was a very poor quality document, and insisted that changes be made to the document. (PX 22.)

19. On February 24, 2001, prior to closing, Mr. Beneville expressed Mr. Pileggi's concerns to Mr. York. In his email to Mr. York, Mr. Beneville states that "Frank Pileggi is very concerned over what he believes to be a lack of clarity in the Escrow Agreement and in the Promissory Note. He has offered to rewrite both documents . . . ." (DX 20.)

20. On February 24, Mr. Beneville communicated to Mr. Pileggi that the parties to the purchase, "[o]n a handshake, . . . agreed on . . . the substance of the agreement. . . . Carlos [Lidksy] will work with you on the form of the Promissory Note and Escrow Agreement." (DX 20.)

21. On February 24, Thad Bracegirdle of the law firm Richards Layton & Finger became the escrow agent. (DX 20.)

22. On February 25, 2001, Mr. Pileggi expressed concerns to Mr. Beneville about the payout terms in the Purchase Agreement. (DX 22.)

23. On February 25, Mr. Beneville dismissed Mr. Pileggi's concerns as "a minimal risk." (DX 22.)

24. On February 26, 2001, at Mr. Pileggi's request, David Funk, Esquire emailed to Mr. Beneville, Mr. Lidsky, and Mr. Pileggi, a draft Escrow Agreement in "skeletal form," which required "additional information to be included as the Stock Purchase Agreement is finalized." (DX 24.)

25. On February 28, 2001, Mr. Lidsky filled in the blanks in Mr. Funk's draft Escrow Agreement and attached it as pages 16-19 of the 2/28/01 Stock Purchase Agreement. (DX 29 at 16-19.)

26. On February 28, 2001, Mr. Pileggi communicated to Mr. Beneville that the closing documents were not in the condition that Mr. Pileggi preferred. (DX 30.)

27. The purchase of CARNET closed on February 28, 2001. (Trial

Tr. at B-56.)

28. At the time of the closing, no escrow agreement was signed. (Trial Tr. at B-60.)

29. All drafts of the Escrow Agreement created through March 6 provided that PC Group would make monthly deposits in the First Union Account of a sum equal to 4.5 percent of the earned premium for the first year and 4 percent of the earned premium for subsequent years ("the Earned Premium language"). (DX 42, PX 6.)

30. On March 2, 2001, Han Choi, counsel for escrow agent First Union National Bank, revised Mr. Lidksy's draft and forwarded the March 2 draft to Mr. Pileggi and Mr. Lidsky. CompareRite software indicated that 32 changes were made in the text. (DX 42.)

31. The March 2 draft contained the Earned Premium language in paragraph 3, and was 4 pages in length. (DX 42 at 3.)

32. On March 5, 2001, Mr. Pileggi sent an email to Mr. Choi and Mr. Lidsky requesting seven changes be made to the March 2 draft. (DX 40.)

33. On March 6, Mr. Choi sent a revised draft of the agreement to Mr. Pileggi and Mr. Lidsky. The revised draft was "red-lined," and contained the "Earned Premium" language in paragraph 3. The March 6 draft was 18 pages in length. (PX 6.)

34. Robert Unterberger, Esquire, another lawyer working at Fox Rothschild, sent a memorandum to Mr. Pileggi indicating that he

had reviewed the March 6 draft to be sure the changes Mr. Pileggi requested in the March 5 email (DX 40) had been implemented therein. (DX 41.)

35. On the morning of March 9, Laurie Tidwell, Mr. Choi's secretary, sent to Mr. Pileggi, Mr. Lidsky, and Paul Henderson of First Union National Bank what she identified as the final version of the Escrow Agreement. (DX 44.)

36. The email accompanying the March 9 Escrow Agreement did not indicate that the March 9 version contained any changes. (DX 44.)

37. The March 9 Escrow Agreement was not a red-lined document and no changes were indicated therein. (DX 45.)

38. Approximately one half-hour after sending what she identified as the final version of the Escrow Agreement on March 9, Ms. Tidwell sent the parties an updated agreement which corrected the agreement's wiring instructions. (DX 45.)

39. The email accompanying the second March 9 version did not indicate that the second March 9 version contained any changes other than modified wiring instructions for the escrow account. In her email, Ms. Tidwell stated "[t]his agreement now final." (DX 45.)

40. The second March 9 Escrow Agreement was not a red-lined document and no changes were indicated therein. (DX 46.)

41. In both March 9 versions of the Escrow Agreement, the term

"Earned Premium" had changed to "Annualized Net Income" ("the Changes"), thus reducing substantially the amount of money the PC Group was required to deposit in the Escrow Account. (DX 44, 46.)

42. Both March 9 drafts were 19 pages in length. (DX 44, 45.)

43. On March 9, Mr. Pileggi forwarded the first March 9 version of the Escrow Agreement to Mr. Beneville for his review. (DX 46.)

44. In the email accompanying the Escrow Agreement, Mr. Pileggi instructed Mr. Beneville, "Please review and, if agreeable to you, sign and return by fax to First Union's lawyer, (with a copy to me) the signature page for the attached escrow agreement." (PX 13.)

45. In the March 9 email, Mr. Pileggi did not bring the Changes to Mr. Beneville's attention. (PX 13.)

46. Mr. Pileggi billed Mr. Beneville for 24 minutes of time on March 9, 2004 for "follow-up on escrow agreement." (PX 41.)

47. By fax to Mr. Pileggi dated March 9, 2001, escrow agent Thad Bracegirdle requested that two changes be made an earlier draft of the Escrow Agreement. (DX 47.)

48. On March 9, 2005, Mr. Pileggi communicated to Mr. Bracegirdle that Mr. Pileggi "made all the changes you requested for the Escrow Agreement." (DX 48.)

49. On March 11, 2001, Mr. Beneville communicated to Mr. Pileggi

that "I have just carefully reviewed the Stock Purchase Agreement and find that, under its terms, I don't get the life insurance policy. . . . I am driven to conclude that this change in terms was sinister and explains the huge rush at the end of the deal to wrap everything up. I think PC Group set us up." (DX 49.)

50. In response, on March 12, Mr. Pileggi reiterated to Mr. Beneville that Mr. Pileggi was "not comfortable with the way the deal was rushed." Further, Mr. Pileggi stated that he "wanted to wait to close," but that Mr. Beneville had said he needed the money. (DX 49.)

51. On March 14, Mr. Beneville contacted Mr. Pileggi regarding the March 9 Escrow Agreement. Mr. Beneville stated that he had a "bifold problem with the [Escrow Agreement]," and indicated two changes he wanted made. First, Mr. Beneville objected to the Escrow Agreement's entirety provision in paragraph no. 17 of page 14. Second, he criticized the agreement for not stating what would happen to the stock certificates if the terms of the purchase agreement were not met. (DX 50.)

52. Mr. Beneville's March 14 email made no mention of the Changes. (DX 50.)

53. On March 16, 2001, Mr. Unterberger sent Mr. Bracegirdle "a mark-up and final version of the Escrow Agreement" that reflected changes Mr. Bracegirdle had requested. (DX 51.)

54. On March 27, Mr. Unterberger mailed Mr. Beneville a final

version of the Escrow Agreement, requesting Mr. Beneville's "review and signature." (DX 52.)

55. Mr. Beneville signed, but did not read or review, the Escrow Agreement attached to Mr. Unterberger's March 27 letter. (DX 89 at 131-33.)

56. On May 11, Mr. Pileggi faxed Mr. Beneville another version of the Escrow Agreement, stating, "Please review the attached, sign and return asap." (DX 55.)

57. Mr. Beneville did not read or review the Escrow Agreement attached to Mr. Pileggi's May 11 letter. (DX 89 at 133-34.)

58. On May 14, Mr. Unterberger sent Mr. Beneville another copy of the May 11 draft. (DX 56.)

59. Mr. Beneville did not read or review the Escrow Agreement attached to Mr. Unterberger's May 14 letter. (DX 89 at 139.)

60. On May 14, 2001, Mr. Pileggi, by letter to James C. Strum, acknowledged receipt of "additional proposed changes to the escrow agreement." (DX 56.)

61. On May 31, Mr. Unterberger sent Mr. Beneville a version of the Escrow Agreement containing the changes requested by Mr. Strum, instructing Mr. Beneville to, "Please review it and return your signed signature page to me at your earliest convenience." (DX 57.)

62. On June 5, 2001, Mr. Unterberger sent a final version of the Escrow Agreement to Paul Henderson at First Union National Bank.

Mr. Unterberger indicated that Schedule A of the Agreement was incomplete. (DX 59.)

63. On June 7, Mr. Beneville emailed Mr. Pileggi about the Escrow Agreement. He wrote, "Please consider the terms of the escrow agreement, as outline by Carlos [Lidsky] in the attachment, to be approved by yours truly." (DX 60.)

64. On June 8, Mr. Unterberger sent a letter to Mr. Beneville and the other relevant parties, copying Mr. Pileggi, which enclosed an Escrow Agreement that reflected a complete Schedule A and Ms. Zehnpfennig's new address. (DX 61.)

65. Mr. Unterberger's June 8 letter stated that the Escrow Agreement was open and that payment was due by June 10 according to the Stock Purchase Agreement. (DX 62.)

66. Mr. Beneville signed and returned each forwarded draft of the First Union Agreement. (D.I. 1 at ¶ 50.)

67. On June 11, 2001, Mr. Unterberger notified Mr. Lidsky that Mr. Unterberger considered PC Group to be in default under the Stock Purchase Agreement for failure to make the first quarterly payment into the Escrow Account. (DX 64.)

68. Pursuant to Section 11(c) of the Stock Purchase Agreement, mediation was sought as a result of Plaintiffs' June 11, 2001, Notice of Default. (D.I. 153 at 5.)

69. During the mediation hearing held on or about October 26, 2001, Mr. Beneville discovered the Changes for the first time.

(Trial Tr. at A-71).

70. Following the mediation hearing, Mr. Beneville informed Mr. Pileggi that he would like to have the matter listed for arbitration. (D.I. 153 at 5; DX 72.)

71. By decision dated July 3, 2002, the Arbitrators awarded Mr. Beneville $253,506.44. (DX 86.)

III. Legal Fees

72. Mr. Pileggi was employed by Manta and Welge at the time the derivative lawsuit was filed in 1999. (Trial Tr. at B-43.)

73. On or about October 31, 1999, Mr. Beneville entered into a special Fee Arrangement with Mr. Pileggi. (DX 96.)

74. Effective February 1, 2001, Mr. Pileggi joined the Fox Rothschild, LLP ("Fox Rothschild") law firm and Mr. Beneville agreed to the Fox Rothschild firm continuing to represent him. (PX 24.)

75. On or about March 2, 2001, Mr. Beneville agreed to pay $80,000 towards legal fees and disbursements. Of that sum, $53,333 was allocated to past accounts receivables and the remaining $26,667 was considered as a retainer by Fox Rothschild and held in escrow for future services. (DX 36.)

76. Fox Rothschild billed Mr. Beneville for professional services rendered through October 2002. (DX 97-109, 111-117.)

77. Mr. Beneville made a payment of $17,780 to Fox Rothschild in June 2001. (DX 101.)

78. Mr. Beneville and Fox Rothschild signed another fee agreement prior to the arbitration hearing. (DX 110.)

79. From February 1, 2002 to October 15, 2002, Plaintiffs incurred unpaid legal fees and disbursements of $251,070.34. (DX 36, 97-109, 111-117.)

CONCLUSIONS OF LAW

I. Applicable Legal Standards

A. Legal Malpractice

In order to sustain a claim of professional negligence against a Delaware attorney, a plaintiff must establish the applicable standard of care through the presentation of expert testimony, a breach of that standard of care, and a causal link between the breach and the injury. Giordano v. Heiman, 2001 WL 58952, at *1 (Del. January 18, 2001). It is well settled law that claims of legal malpractice must be supported by expert testimony.[1] An exception to this rule exists, however, when the professional's mistake is so apparent that a layman, exercising his common sense, is perfectly competent to determine whether there was negligence. Larrimore v. Homeopathic Hosp. Assoc. of Del., 181 A.2d 573, 577 (Del. 1962).

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[1] Delaware cases holding that claims of legal malpractice must be supported by expert testimony include Giordano v. Heiman, 2001 WL 58952, at *1 (Del. January 18, 2001)(citing Alston v. Hudson, 1997 WL 560883, at *2 (Del.); Weaver v. Lukoff, 1986 WL 17121, at *1 (Del. July 1, 1986); Seiler v. Levitz Furniture Co. of Eastern Region, Inc., 367 A.2d 999, 1008 (Del. 1976)); and Brett v. Berkowitz, 706 A.2d 509, 517-18 (Del. 1998).

II. DISCUSSION

A. Negligence

1. Duty

Pursuant to Delaware case law, the standard of care applicable to a professional can only be established by way of expert testimony.[2]

Defendants' expert, Mark D. Olson, testified at trial that "standard commercial practice in Delaware . . . is that when a lawyer who controls the document makes changes, those changes are disclosed to the other parties, either directly or through their counsel. . . . [C]ounsel who controls the document is responsible for indicating to other counsel any changes that have been made." Mr. Olson testified that "[t]hat practice allows commercial transactions to proceed at a pace and a cost that clients find reasonably acceptable. The alternative would be that each lawyer involved in a transaction would have to re-read every document every time a change were made." (Trial Tr. at C-14-15.)

Further, Mr. Olson testified that, in commercial transactional practice, "lawyers . . . customarily adjust the level of their scrutiny to match what they understand or perceive

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[2] See Giordano v. Heiman, 2001 WL 58952, at *1 (Del. January 18, 2001)(citing Alston v. Hudson, 1997 WL 560883, at *2 (Del.); Weaver v. Lukoff, 1986 WL 17121, at *1 (Del. July 1, 1986); Seiler v. Levitz Furniture Co. of Eastern Region, Inc., 367 A.2d 999, 1008 (Del. 1976)); and Brett v. Berkowitz, 706 A.2d 509, 517-18 (Del. 1998)

to be the level of sophistication of their clients . . . ." (Trial Tr. at C-15.) Mr. Olson testified that, in his view, "Mr. Pileggi might reasonably have expected that Mr. Beneville would review the agreement, particularly with respect to its business terms, and discuss any concerns . . . he had with Mr. Pileggi." (Trial Tr. at C-15-16.)

Plaintiffs' expert, Kenneth J. Marino, testified at trial that "the attorney is responsible for reviewing all the changes to all the documents, no matter what the client reviews. That has always been my standard and my practice." (Trial Tr. at B-230.) With regard to relying on the representations of the lawyer who made the changes as to what has been changed, Mr. Marino testified that "it is up to the individual lawyer whether or not to do his own diligence or rely on what he gets from opposing counsel." (Trial Tr. at B-239.) In response to the question, "Can a commercial lawyer rely on his or her client to pick out material changes to a document," Mr. Marino testified "[a]s a general statement, it depends on the rules of engagement between the lawyer and that client." (Trial Tr. at B-229.)

The standard for a claim of legal malpractice or negligence by a lawyer is not what would be ideal in a given situation; rather it is the "exercise the skill and knowledge ordinarily possessed by attorneys under similar circumstances." 3 Ronald E. Mallen et al., Legal Malpractice § 19.2 (5th Ed. 2000). Experts

who testify as to the standard of care are familiar with the standard skill and care ordinarily practiced by Delaware attorneys. Brett v. Berkowitz, 706 A.2d 509, 517-18 (Del. 1998).

The Court finds Defendants' expert, Mr. Olson, more persuasive than Plaintiffs' expert, Mr. Marino, concerning the standard of care a Delaware commercial lawyer must adhere to when retained to represent a party in a transaction similar to this one. Specifically, Mr. Marino testified as to his own practice with little rationale. He testified as to the standards that a lawyer might negotiate with his or her client, but did not testify to a recognized, standard practice for a commercial transaction for Delaware lawyers. Further, Mr. Olson testified that the standard to which he testified allows a commercial transaction "to proceed at a pace and a cost that clients find reasonably acceptable." (Trial Tr. at B-14.)

2. Breach

The court is persuaded by Mr. Olson's opinion that Mr. Pileggi conformed to the standard of care applicable to attorneys in commercial transaction practice in Delaware. (Trial Tr. at C-13.) In this regard, Mr. Olson testified that Mr. Pileggi could properly rely upon the absence of any changes having been disclosed to him in transmitting the March 9 document to his client. At least until the time Mr. Pileggi received the March 9 versions of the Escrow Agreement that contained the Changes, the

Escrow Agreement was under the control of Mr. Choi, counsel for First Union National Bank. On March 5, 2001, Mr. Pileggi asked Mr. Choi to make several changes to the March 2 version of the Escrow Agreement. The March 6 version of the Escrow Agreement reflected those changes. The first March 9 version purportedly contained no changes. The second March 9 version contained corrected wiring instructions. The versions that First Union submitted to Mr. Pileggi on March 6 and March 9 did not indicate that any further changes had been made beyond those requested by Mr. Pileggi or beyond the corrected wiring instructions.

Further, the Court finds persuasive Mr. Olson's testimony that Mr. Beneville has substantial experience in the insurance industry and, therefore, "Mr. Pileggi might reasonably have expected that Mr. Beneville would review the agreement, particularly with respect to its business terms, and discuss any concerns that he had with Mr. Pileggi." (Trial Tr. at C-16.)

As of March 9, 2001, Mr. Beneville had seen the February 26 skeletal draft (DX 24) created by Mr. Funk and the February 28 Escrow Agreement attached as pages 16-19 of the Stock Purchase Agreement (DX 24) created by Mr. Lidsky. On March 9, Mr. Pileggi forwarded to Mr. Beneville the 19-page First Union draft sent by Ms. Tidwell. Two days later, on March 11, Mr. Beneville advised Mr. Pileggi that he had "very carefully reviewed the Stock Purchase Agreement" and found that the terms of the life

insurance policy were not what Mr. Beneville had wanted. Mr. Beneville concluded that the change was sinister and that PC Group had "set us up." On March 14, 2001, Mr. Beneville responded to Mr. Pileggi's March 9 request that Mr. Beneville review the First Union Escrow Agreement. Mr. Beneville stated that he had two problems with that version of the Escrow Agreement. (DX 50.) The Court concludes that these facts establish that Mr. Pileggi was reasonable in his expectation that Mr. Beneville would review the terms of the Escrow Agreement before signing it.

In addition to the above, the Court finds the following evidence supports a conclusion that Mr. Pileggi acted reasonably. First, Mr. Beneville essentially co-authored the Stock Purchase Agreement with Mr. Lidsky and the other CARNET shareholders, changing the document himself and forwarding revisions to Mr. Pileggi after the fact. Mr. Pileggi was reviewing the Stock Purchase Agreement's legal aspects; Mr. Beneville was reviewing the insurance aspects. Second, Mr. Beneville closed on the CARNET sale on February 28, 2001, against Mr. Pileggi's advice, using documents that Mr. Pileggi warned were of poor quality and after rejecting Mr. Pileggi's offer to rewrite the documents. Further, every time Mr. Pileggi sent a draft of the Escrow Agreement to Mr. Beneville, Mr. Pileggi clearly instructed Mr. Beneville to review the document before signing it.

In sum, the Court finds that Mr. Pileggi's conduct in handling the drafts of Escrow Agreement met the Delaware standard of care. Thus, the Court concludes that Mr. Pileggi did not breach any duty or commit negligence in the representation he provided Mr. Beneville with respect to the subject transaction.

II. Counterclaim for Fees and Disbursements

In their counterclaim, Defendants contend that they are entitled to the entry of judgment against Plaintiffs, jointly and severally, in the amount of $251,070.34, plus pre- and post-judgment interest since July 31, 2002, for fees and disbursements connected with Pileggi's representation of Plaintiffs. Defendants contend that, commencing February 1, 2001, and continuing through October 15, 2002, Plaintiffs incurred fees of $259,982.50 and disbursements of $35,513.06 towards which they have used credits of $26,667 and $17,780.

Plaintiffs respond that, because Mr. Pileggi negligently failed to notice the Changes, Plaintiffs received no "value" from Defendants for any legal work after March 9, 2001.

Because the Court has concluded that Defendants are not liable for legal malpractice, the Court concludes that Defendants are entitled to the entry of judgment against Plaintiffs, jointly and severally, in the amount of $251,070.34, plus pre- and post-judgment interest since July 31, 2002 for fees and disbursements.

CONCLUSION

For the reasons discussed, the Court concludes that Plaintiffs have failed to prove their claims of professional negligence. Accordingly, the Court will enter final judgment in favor of Defendants and against Plaintiffs on all claims and counterclaims.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

EDWARD BENEVILLE, JR., WINCHESTER INSURANCE COMPANY, LTD.,	:	
Plaintiffs,	:	
v.	:	Civil Action No. 03-474 JJF
FRANCIS PILEGGI, ESQUIRE, and FOX ROTHSCHILD, LLP,	:	
Defendants.	:	

FINAL JUDGMENT ORDER

At Wilmington, this 27 day of April 2005, for the reasons set forth in the Opinion issued this date;

IT IS HEREBY ORDERED AND ADJUDGED that:

1) Judgment be and is hereby entered in favor of Defendants, Francis Pileggi, Esquire and Fox Rothschild LLP, and against Plaintiffs, Edward Beneville, Jr. and Winchester Insurance Company Limited, on Plaintiffs' claims of negligence;

2) Judgment be and is hereby entered in favor of Defendant Fox Rothschild, LLP and against Plaintiffs, Edward Beneville, Jr. and Winchester Insurance Company Limited, jointly and severally, in the amount of Two Hundred Thousand Seventy Dollars and Thirty-Four Cents ($251,070.34) plus pre- and post-judgment interest

since July 31,2002 on Defendants' crossclaim.

UNITED STATES DISTRICT JUDGE

(By) Deputy Clerk