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Using NJ's Plaintiff-Friendly Case Law, an Aggressive Litigant Stands To Win Up to \$2.5M From a NY Firm

A Wall Street firm facing a judgment of up to \$2.5 million has discovered why New Jersey is such a harsh environment for legal malpractice defendants.

On Jan. 23, a jury in Bergen County Superior Court found that 70-lawyer Herzfeld & Rubin's negligence in 1985 caused a loss to Integrity Insurance Co., of Paramus, which later went into liquidation and has still not emerged. The firm argued that it did nothing wrong, but by the jury's reckoning, plaintiffs' lawyer David Mazie, a partner in Livingston's Nagel, Rice & Dreifuss, had the facts on his side.

Just as important, it looks like Mazie had emerging case law on his side, too.

Three state Supreme Court

decisions in the past 22 months have put New Jersey on an anti-malpractice rampage, and Herzfeld & Rubin is the first firm to be felled by all three rulings at once.

One case strengthens the notion that a lawyer can have a duty to a nonclient. The second says, in effect, there is no comparative negligence in malpractice cases; lawyers who provide less than adequate information, even to a savvy client, can't cut their losses by blaming the client.

The third decision, like a 400-pound wrestler giving an already stunned opponent a full body slam, holds the losing firm liable for the winning plaintiff's legal fees.

Mazie says he will ask the court to order Herzfeld & Rubin to pay his



Malpractice Gold Mine

firm's fees and costs of \$700,000 or so, on top of \$971,000 in damages, \$460,000 in prejudgment interest and \$400,000 in a complex additional set of damages.

"New Jersey has become very favorable for plaintiffs in malpractice cases," Mazie says. And that's one of the few points over which he and Herzfeld & Rubin aren't arguing.

"I'm confident, in New York, the law as determined by the highest court, would not support a claim such as this," says managing partner Herbert Rubin.

"I don't think New Jersey's will support it either," he adds, but that's a statement to be tested on appeal.

— By Henry Gottlieb