

**SOUTH CAROLINA SUPREME COURT HOLDS THAT LEGAL MALPRACTICE
CLAIM CANNOT BE ASSIGNED BETWEEN ADVERSARIES IN LITIGATION IN
WHICH THE ALLEGED LEGAL MALPRACTICE AROSE**

Skipper v. ACE Property and Casualty, Op. No. 27547 (S.C. Sup. Ct) (July 15, 2015)

George Skipper (“Skipper”) was involved in a motor vehicle collision with a logging truck drive by Harold Moors (“Moors”) and owned by Specialty Logging, LLC (“Specialty”). Specialty had an automobile insurance policy issued by ACE Property and Casualty Insurance Company (“ACE”). After the accident, Skipper retained an attorney who drafted a demand letter to ACE offering to settle the case for the policy limits. ACE hired two lawyers out of Atlanta to represent Specialty and Moors. Those attorneys offered Skipper \$50,000 to settle the claim. Skipper declined the settlement offer and filed suit in state court against Specialty and Moors.

Without the knowledge of ACE or its attorneys, the Skippers entered into a settlement agreement with the allegedly at-fault state court defendants Moors, Specialty, and Specialty’s owner. The settling defendants agreed to admit liability; further, they also agreed to pursue a legal malpractice claim against ACE and its attorneys, assigning the predominant interest in that claim to Skipper and his wife. In exchange for the admission, the Skippers agreed not to execute the judgment so long as the settling parties cooperated in the legal malpractice litigation against the two attorneys representing ACE. The Skippers, Moors, Specialty, and Specialty’s owner then filed a legal malpractice action against the attorney defendants in state court. The case was removed to federal court. Because the issue of assignability of legal malpractice claims between adversaries in litigation in which the alleged malpractice occurred was a novel issue in the state, the South Carolina Supreme Court accepted the certified question from the United States District Court.

The South Carolina Supreme Court joined the majority of jurisdictions prohibiting the assignment of such legal malpractice claims. The Court explained that permitting the assignment of legal malpractice claims increases the risks of collusion between parties and threatens the integrity of the attorney-client relationship. Moreover, the Court asserted that permitting the assignment of claims between adversaries in litigation in which the alleged legal malpractice arose would “lead to disreputable role reversals” where the plaintiff-assignee would be required to take a position “diametrically opposed” to its position in the underlying litigation. The unanimous decision held that the Court could not countenance such an “abrupt and shameless shift in position,” as doing so would bolster the image that lawyers make decisions based only “upon where the money lies.” Accordingly, the Court ruled that the Plaintiffs’ legal malpractice claim could not be assigned.