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NEW JERSEY SUPREME COURT EXPANDS FEE SHIFTING IN LEGAL MALPRACTICE CASES TO COVER NON-CLIENTS

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On April 26, 2016, the Supreme Court of New Jersey expanded its rule allowing fee-shifting in attorney malpractice cases to also cover non-clients. The ruling in Innes v. Marzano-Lesnevich, which provoked a sharp dissent, widens the potential liability of attorneys and could expand fee-shifting in New Jersey to cover a variety of professionals other than attorneys.

Innes arose out of a matrimonial action in which the defendant-attorney, Marzano-Lesnevich, who was counsel to the wife, agreed to hold in escrow the passport of the daughter of the divorcing parents. In violation of the escrow agreement and the fiduciary duty imposed by that agreement, Marzano-Lesnevich released the child's passport to the wife, who then arranged for the daughter to travel to Spain, where she has remained for the past 10 years. The plaintiff-husband sued Marzano-Lesnevich for damages alleging that she negligently released the daughter's passport from escrow. A jury found Marzano-Lesnevich liable for negligence and the trial judge awarded counsel fees to the husband, even though he was not Marzano-Lesnevich's client.

The Supreme Court upheld the trial court's award of legal fees based upon what it viewed as the defendant-attorney's intentional violation of the fiduciary duty the attorney owed to the non-client husband pursuant to the escrow agreement. As the dissent pointed out, this ruling vastly expands what had been a narrow exception allowing fee shifting arising out of an attorney's negligent service to his or her own client. In addition, and as the dissent also highlighted, this ruling could apply to other professionals, such as title companies or accountants, who hold escrows or otherwise owe fiduciary duties to non-clients.

SPSK is available to assist clients in their understanding of this new ruling and other professional liability issues.

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