

Cohen Argued Successful Appeal to Establish Limits on Accountant's Liability to Third Parties

Partners

Susan E. Cohen

Lindsey A. Gil

Susan M. Silva

Related Practices

Business Litigation

General Litigation

Professional Liability Litigation

By Peabody & Arnold on April 18, 2019

Peabody & Arnold partner, Susan E. Cohen, argued a successful RI Supreme Court appeal that established limits on accountants' liability to third parties. Peabody & Arnold partner, Richard L. Nahigian, and associates, Lindsey A. Gil and Susan M. Silva, worked on the underlying case discovery and briefing leading to the successful result to make new law in Rhode Island limiting accountants' duties to third-parties.

In the case of *Rhode Island Industrial-Recreational Building Authority ("IRBA") v. Capco Endurance, LLC, Feeley & Driscoll, et al.*, ___ S. Ct. ___ (2019); RI Lawyers Weekly No. 60-026-19, IRBA argued that it relied on Capco's accountant's 2009 audit report in connection with credit extensions on its \$5 million bond insurance on Capco's \$20 million, \$23.5 million and \$28 million lines of credit. After extensive discovery and motion practice, Peabody & Arnold attorneys persuaded the trial court to reject a reasonable foreseeability test and instead apply the more limited Restatement Rule to hold that Capco's accountants did not owe a duty to IRBA and thus grant summary judgment dismissal of IRBA's third-party liability claims against Capco's accountants.

Cohen's argument persuaded the RI Supreme Court to uphold the trial court decision and apply the Restatement Rule to define the standard of care for accountants to third-parties in RI. Unlike the reasonable foreseeability test which opens the door to third-party claims by any person or entity that might reasonably foreseeably rely on the accountants' work product, the Restatement Rule limits accountants' liability to third-parties to cases:

- by the person or limited group of persons for whose benefit and guidance he [the accountant] intends to supply the information or knows that the recipients intend to supply it, and
- through reliance on it in a transaction that he intends the information to influence or knows the recipient so intends or in a substantially similar transaction.

The Restatement Rule as applied here also limits liability to the person(s) and transaction(s) known and intended at the time the accountants' work is done. Thus, accountants who provide audit reports for use in a known credit bond and insurance transaction are not liable to same third-parties on subsequent increases and amendments to the transaction.