

Jack O'Connor Successfully Defends Attorney Through Appeal

Partners

John J. O'Connor

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Professional Liability Litigation

By Peabody & Arnold on November 15, 2017

Jack O'Connor has successfully defended an attorney who notified her liability insurer of a potential claim against her after her clients were defaulted and a six-figure judgment entered against them in a Superior Court suit. In the underlying case, the Superior Court dismissed only in part the complaint against defense counsel's clients, creating uncertainty as to what remained of the claims. Following that order, defense counsel, Peabody & Arnold's client, moved for a more definite statement. Under rule 12(e), this motion should have stayed the answer deadline, but, while the motion was pending, the Superior Court nonetheless issued a default for failure to answer. Later, the Court denied the motion for a more definite statement. The clerk's office then failed to notify defense counsel of these orders. After inquiring with the clerk and learning of the default, defense counsel moved three times to vacate it; the Court denied each motion and assessed a large damages award against the defendants. Jack represented defense counsel through the course of the appeal from the Superior Court judgment. The Appeals Court reversed the judgment, reasoning that the Superior Court erred both in refusing to remove the default, and in refusing to require the filing of an amended complaint as defense counsel had requested. See Ceruolo v. Garcia, App. Ct. No. 16-P-1443 (Sept. 7, 2017). The Supreme Judicial Court then denied further review. The Appeals Court's decision was a complete victory for the defendants in the underlying suit, and therefore for the defense attorney Jack represented.