

## NEWS & INSIGHTS

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### 11TH CIRCUIT UPHOLDS LIGHTFOOT WIN FOR MINTZ LEVIN IN MALPRACTICE CASE

November 30, 2021

The 11th Circuit has upheld summary judgment for Lightfoot, Franklin & White LLC client Mintz Levin in a legal malpractice lawsuit. Lightfoot partners **Sam Franklin** and **Wes Gilchrist**, along with associate **Amie Vague**, represented Mintz Levin for both the original malpractice suit and the appeal, with Gilchrist arguing before the 11th Circuit. Lightfoot's trial lawyers worked closely with an in-house team from Mintz Levin on the matter.

In its ruling, the 11th Circuit found that U.S. District Court Judge Annemarie Carney Axon was correct in rejecting legal malpractice claims brought against Mintz Levin by the bankruptcy trustee for the now-defunct biotech company Atherotech. The original lawsuit claimed that attorneys from Mintz Levin failed to properly advise Atherotech regarding the legality of paying processing and handling fees to physicians when asked for a legal opinion.

At the time, it was unsettled law as to whether such payments violated the federal Anti-Kickback Statute and False Claims Act. Given that, Mintz Levin's attorneys advised Atherotech that making the payments would always be risky and the only way to remove that risk would be to cease paying the fees.

In upholding the dismissal, the 11th Circuit wrote: "[W]hen an attorney advises a client on an area where the law is 'open,' the attorney is not negligent simply because it later turns out that the attorney's advice was incomplete or incorrect."

"We are pleased to secure this result for our client," said Gilchrist. "Not only does it vindicate how Mintz Levin advised Atherotech, but it also provides some much-needed precedent for all law firms giving advice in unsettled areas of the law. Lawyers are trained and skilled at advising clients of risks and benefits, pros and cons, but it is up to our clients to make business decisions, and a lawyer cannot be faulted for not having a crystal ball to predict new developments in the law."

The case is *Thomas Reynolds v. Mintz Levin Cohn Ferris Glovsky & Popeo PC*, case number 20-13581, in the U.S. Court of Appeals for the Eleventh Circuit.