

## Abate until the underlying case is resolved

Plaintiff Steven Mariano and his company are being sued in a federal court case in New York resulting from the sale of shares to certain hedge fund investors. Simpson Thacher & Bartlett LLP represented Mariano and his company in connection with the transaction. Kasowitz Benson Torres LLP briefly represented Mariano and his company in the New York litigation. In 2017, Mariano sued Simpson and Kasowitz for legal malpractice in Broward County, Florida. Both firms moved to stay or abate the action arguing that Mariano's claims were premature because the underlying New York litigation was still ongoing. The trial court denied the relief and Kasowitz filed a petition for writ of certiorari. The petition was granted and the order denying the motion to stay or abate as to Kasowitz was quashed. The trial court held that the case should be abated until the New York litigation is resolved since whether Mariano incurred any damages as a proximate cause due to the alleged malpractice will not be determined until the outcome of the New York litigation is determined.

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**TAKEAWAY** - There is nothing surprising about this decision since obtaining abatement or a stay until the outcome of the underlying litigation is well ingrained in Florida law. Any concerns about the statute of limitations running, or Florida law changes, can be resolved by the use of a tolling agreement. It is interesting to note that Kasowitz represented itself in the appeal. There is a trend among large firms to use their own lawyers in defending against malpractice claims until certain inflection points are reached.

